

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1915.

No. 899.

THE UNITED STATES, PLAINTIFF IN ERROR,

VS.

HERMAN H. OPPENHEIMER ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

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1 THE UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said District Court of the United States for the Southern District of New York, in the Second Circuit, before you or some of you, between the United States of America and Herman H. Oppenheimer et al., a manifest error hath happened to the great damage of the said United States of America, as by its complaint appears:

We being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days of the date hereof; that the record and proceedings aforesaid being accepted, the said Supreme Court may cause further to be done therein to correct that error, what by right and according to the laws and customs of the United States should be done.

2 Witness, The Honorable Edward D. White, Chief Justice of the United States, the 26th day of February, in the year of our Lord one thousand nine hundred and sixteen.

ALEX. GILCHRIST, Jr.,
*Clerk, U. S. District Court for the
Southern District of New York.*

The foregoing writ is hereby allowed.

AUGUSTUS W. HAND,
*United States District Judge for the
Southern District of New York.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Alexander Gilchrist, Jr., clerk of the District Court of the United States of America for the Southern District of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from four to ninety-three, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of United States of America, plaintiff in error, against Herman H.

Oppenheimer et al., defendants in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the second circuit, this 11th day of March, in the year of our Lord one thousand nine hundred and sixteen, and of the independence of the United States the one hundred and fortieth.

[SEAL.]

ALEX. GILCHRIST, Jr., *Clerk*.

(Indorsed:) C. 7-278. U. S. District Court, Southern District of New York. United States of America versus Herman H. Oppenheimer et al. Writ of error. H. Snowden Marshall, United States attorney, attorney for U. S. Service of a copy of the within is hereby admitted. New York, Feb. 28, 1916. Kellogg & Rose, attorneys for defts., to Messrs. Kellogg & Rose, attorney for defts., 115 Broadway, New York, N. Y.

4

Petition for writ of error.

United States District Court, Southern District of New York.

UNITED STATES OF AMERICA,

vs.

HERMAN H. OPPENHEIMER et al.

Now comes The United States of America, by its attorney, H. Snowden Marshall, and complains that in the record and proceedings had in this cause, and in the order and judgment sustaining defendant's motion to quash the indictment herein, and dismissing said indictment, which judgment was duly made and filed in the office of the clerk of the United States District Court for the Southern District of New York, on February 2, 1916, and the amended judgment which was filed on February 14, 1916, and which order was duly made and filed in the office of the said clerk of the District Court for the Southern District of New York, on the 26th day of February, 1916, a manifest error has happened as will appear in the assignment of errors herewith submitted.

Wherefore, The United States of America prays for the allowance of a writ of error, and for such other orders and process as may cause the same to be corrected by the Supreme Court of the United States.

Dated: New York, February 26th, 1916.

H. SNOWDEN MARSHALL,
U. S. Attorney.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Feb. 26, 1916.

5 *Indictment.*

District Court of the United States of America for the Southern District of New York.

At a stated term of the District Court of the United States of America for the Southern District of New York, begun and held in the city of New York, within and for the district aforesaid, on the first Tuesday of February, in the year of our Lord one thousand nine hundred and fourteen, and continued by adjournment to and including the 24th day of February, in the year of our Lord one thousand nine hundred and fourteen.

SOUTHERN DISTRICT OF NEW YORK, ss:

The grand jurors of the United States of America, within and for the district aforesaid, on their oath present that during the year nineteen hundred and twelve, and up to and including the fifth day of August, nineteen hundred and twelve, Jacques Samuels and Joseph Samuels, late of the city and county of New York, were engaged in business at No. 129 West 20th Street, in the city, county, and State of New York as co-partners, doing business under
6 the firm name of Joseph Samuels & Company, as manufacturers and dealers in braids and embroideries, and kindred merchandise; that Jacques Samuels was and is a resident of the city and county of New York; that Joseph Samuels was and is a resident of the city and county of New York; that Abraham Samuels was and is a resident of the city and county of New York; that Ray Abrahams was and is a resident of the city and county of New York; that Herman J. Dietz was and is a resident of the city and county of New York; that Isaac Anderson was and is a resident of the city and county of New York; that Charles Hepner was and is a resident of the city and county of New York; that Herman H. Oppenheimer was and is an attorney at law in the city of New York, with offices at 170 Broadway, city and county of New York; that on the fifteenth day of June, nineteen hundred and twelve, and continuously on all other days thereafter to and including the 24th day of February, in the year of our Lord one thousand nine hundred and fourteen, in the county of New York, Southern District of New York, and within the jurisdiction of this court and under the circumstances aforesaid, the said Jacques Samuels and Joseph Samuels, co-partners doing business as aforesaid, under the firm name of Joseph Samuels & Company, as aforesaid, and the said Abraham Samuels, Ray Abrahams, Herman J. Dietz, Isaac Anderson, Charles Hepner, and Herman H. Oppenheimer
7 then and there anticipated, contemplated, and planned that a petition in bankruptcy should thereafter be filed to have the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually

and as a copartnership, adjudicated bankrupts under the bankruptcy laws of the United States; that thereafter, in the due course of the bankruptcy proceedings, a trustee for the estate in bankruptcy of the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as a copartnership, should be duly appointed.

And the grand jurors aforesaid, on their oath aforesaid, do further present that on the fifth day of August, nineteen hundred and twelve, a petition in bankruptcy was duly filed in the United States District Court for the Southern District of New York to have the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as copartners, adjudicated bankrupts; that on the 5th day of August, nineteen hundred and twelve, Alexander S. Webb was duly appointed receiver of the assets and effects of the said copartnership of the said Jacques Samuels and Joseph Samuels, copartners doing business as aforesaid, and of the individual estates of said Jacques Samuels and Joseph Samuels, and on the sixth day of August, 1912, the said Alexander S. Webb duly qualified as such; that on the 23rd day of October the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as copartners, were adjudicated bankrupts by the said United States district court; that on the fourth day of November, nineteen hundred and twelve, Alexander S. Webb was duly appointed trustee of the assets and effects of the estate in bankruptcy of the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph

Samuels & Co., and of their individual estates, and the said
8 Alexander S. Webb, on the thirteenth day of November, nineteen hundred and twelve, duly qualified as such.

And the grand jurors aforesaid, on their oath aforesaid, do further present that the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Ray Abrahams, Herman J. Dietz, Isaac Anderson, Charles Hepner, and Herman H. Oppenheimer, on the 15th day of June, 1912, and continuously on all other days thereafter to and including the 24th day of February, nineteen hundred and fourteen, in the county of New York, Southern District of New York, and within the jurisdiction of this court and under the circumstances aforesaid, did willfully, knowingly, and unlawfully conspire together to commit an offense against the United States, that is to say, the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Ray Abrahams, Herman J. Dietz, Isaac Anderson, Charles Hepner, and Herman H. Oppenheimer did willfully, knowingly,

and unlawfully conspire and corruptly and fraudulently agree among themselves that they would knowingly and fraudulently, while the said Jacques Samuels and Joseph Samuels, individually and as copartners doing business as aforesaid under the firm name of Joseph Samuels & Co., should be bankrupts as aforesaid, conceal from said Alexander S. Webb, the trustee of the said estates in bankruptcy, certain properties and moneys, which would, in the due course of the administration of said estates in bankruptcy belong to the said estates in bankruptcy, to wit, certain moneys which had theretofore been on deposit in banking institutions in the city of New York, to the credit of said Jacques Samuels and Joseph Samuels and of said copartnership Joseph Samuels & Co., to an amount upwards of one thousand dollars (\$1,000.00), and property consisting of certain shares of stock of the Borough Apartment Company, a corporation existing and organized under the laws of the State of New

9 York, which said certificates of stock had been issued by said Borough Apartment Company in the name of the said Jacques Samuels and said Joseph Samuels and were the property of said copartnership of Joseph Samuels & Company, the value of said certificates of stock being upwards of the sum of one thousand dollars (\$1,000.00), and other property, the kind, amount, and particular description of which, and the exact amount and value of which, is now to the grand jurors unknown.

And in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels and Abraham Samuels did on or about June 28th, nineteen hundred and twelve, in the county of New York, Southern District of New York, make and cause to be made false and fictitious entries in a certain book called "time-book" belonging and appertaining to the business of Joseph Samuels & Co., whereby it was made to appear that one William Erlich was employed by said copartnership on January 6, nineteen hundred and twelve, and continuously thereafter until May 6th, 1912, and had received from said copartnership for said services the sum of forty dollars (\$40.00) a week on January 6th, 1912, and continuously weekly thereafter up to and including May 6th, 1912, whereas, in truth and in fact, the said William Erlich was not employed by said copartnership until May 6th, 1912, and did not receive from said copartnership any sum or sums of money for services prior to said May 6th, 1912.

And further in pursuance of and to effect the object of said conspiracy, said Jacques Samuels and said Joseph Samuels did, on or about June 20th, 1912, destroy a certain book of account belonging and appertaining to the business of said copartnership of Joseph Samuels & Co., called purchase ledger, and certain other books of

account, the number and more particular description of which are now to the grand jurors unknown.

10 And further in pursuance of and to effect the object of said conspiracy, the said Ray Abrahams did on or about November 25th, 1912, receive from said Jacques Samuels a large sum of money, an amount in excess of one thousand dollars (\$1,000.00), the exact amount of which is now to the grand jurors unknown, the property of said copartnership of Joseph Samuels & Co., and which would, in the due course of the administration of said estates in bankruptcy, become the property of the said estate in bankruptcy of the said copartnership of Joseph Samuels & Co., and did thereafter conceal the said moneys from said Alexander S. Webb, the trustee of the estate in bankruptcy of the said copartnership.

And further in pursuance of and to extend the object of said conspiracy, the said Herman J. Dietz did, on or about June 28th, 1912, sign and deliver to said Jacques Samuels a certain promissory note, for the sum of forty-five hundred dollars (\$4,500.00), which said note was marked "nonnegotiable," and was in words and figures as follows:

\$4,500.00

NEW YORK, May 16, 1912.

Four months after date, I promise to pay to Joseph Samuels & Co. forty-five hundred 00/100 dollars, at the Columbia Bank, 407 Bway, N. Y.

Value received.

Nonnegotiable.

No. Due Sept. 16.

H. J. DIETZ.

And further in pursuance of and to effect the object of said conspiracy, the said Isaac Anderson did, on June 17th, 1912, write his endorsement upon the back of a certain check drawn by said

11 Jacques Samuels in the name of Joseph Samuels & Co., upon the Second National Bank of the City of New York, to the order of "I. Anderson" in the amount of three thousand dollars (\$3,000.00), which said check and said endorsement on the back of said check are as follows:

Face of check.

JOSEPH SAMUELS & Co.
Braid and Embroideries.

No. 17

NEW YORK, June 17, 1912.

Pay to the order of I. Anderson \$3,000⁰⁰/₁₀₀ (three thousand 00/100 dollars).

To the Second National Bank
of the City of New York.

JOS. SAMUELS & Co.

Back of check.

Endorsements: I. Anderson, Jos. Samuels & Co., Harry Siegel.

And further, in pursuance of and to effect the object of said conspiracy, the said Charles Hepner did, on July 25th, 1912, write his endorsement upon the back of a certain check drawn by the said Jacques Samuels, in the name of Joseph Samuels & Co., upon the Pacific Bank in the city of New York, to the order of Charles Hepner, in the amount of \$405.40, which said check and the endorsement upon the back of said check are as follows:

Face of check.

No. 160

NEW YORK, July 25, 1912.

The Pacific Bank,
Madison Avenue Branch—28th St.

Pay to the order of Charles Hepner four hundred & five 40/100 dollars.

\$405⁴⁰/₁₀₀

JOS. SAMUELS & Co.

12

Back of check.

Jos. Samuels & Co. Charles Hepner.

And further, in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels did, on July 22nd, 1912, take from the funds of said copartnership of Joseph Samuels & Co. the sum of \$1,100.00, which said sum of money would, in the due course of the administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said copartnership, and did conceal and secrete the said sum of \$1,100.00 from said Alexander S. Webb, the trustee of said estate in bankruptcy.

And further, in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels did, on July 26th, 1912, take from the funds of said copartnership of Joseph Samuels & Co. the sum of \$2,500.00, which said sum of money would, in the due administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said copartnership, and did conceal and secrete the said sum of \$2,500.00 from said Alexander S. Webb, the trustee of said estate in bankruptcy.

And further, in pursuance of and to effect the object of said conspiracy, the said Herman H. Oppenheimer, on July 29th, 1912, received the sum of one thousand dollars (\$1,000.00) from the said copartnership of Joseph Samuels & Company; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided.

H. SNOWDEN MARSHALL,
United States Attorney.

13 (Endorsed) 2461-6-333. U. S. District Court. The United States of America vs. Jacques Samuels and Joseph Samuels, doing business under the firm name of Samuels & Co., Abraham Samuels, Ray Abrahams, Herman J. Dietz, Charles Hepner and Herman H. Oppenheimer, and Isaac Anderson. Indictment: Conspiracy to conceal assets from trustee in bankruptcy. U. S. Rev. Stat., sec. 29b, Bankruptcy Act, 37 U. S. C. C. H. Snowden Marshall, U. S. attorney. A true bill, Henry Lewis, foreman. U. S. District Court, S. D. of N. Y., filed Feb. 24, 1914.

Feby. 25th, 14. H. H. Oppenheimer arraigned and pleads not guilty. Leave to withdraw by Mch. 20/14.

Ray Abrahams, same entry as above.

Jacques Samuels, same entry as above.

Joseph Samuels, same entry as above.

Abraham Samuels, same entry as above.

Charles Hepner, same entry as above.

Bail previously given to stand.

Feb. 26. H. J. Dietz pleads not guilty.

Feb. 27. Isaac Anderson pleads not guilty.

Mch. 24. Filed demurrer of A. Samuels, C. Hepner, R. Samuels.

Oct. 1. Filed opinion, Thomas J. Indictment dismissed as to Oppenheimer, Abr. Samuels, Chas. Hepner, Ray Abrahams.

14

Indictment.

District Court of the United States of America for the Southern District of New York.

At a stated term of the District Court of the United States of America for the Southern District of New York, begun and held in the City of New York, within and for the District aforesaid, on the first Tuesday of February in the year of our Lord one thousand nine hundred and fourteen, and continued by adjournment to and including the 24th day of February in the year of our Lord one thousand nine hundred and fourteen.

SOUTHERN DISTRICT OF NEW YORK, ss:

The grand jurors of the United States of America, within and for the district aforesaid, on their oath present that during the year nineteen hundred and twelve, and up to and including the fifth day of August, nineteen hundred and twelve, Jacques Samuels and Joseph Samuels, late of the city and county of New York, were engaged in business at No. 129 West 20th Street, in the city, county, and State of New York as copartners, doing business under the firm name of Joseph Samuels & Co., as manufacturers and dealers in braids and embroideries, and kindred merchandise; that Jacques Samuels was

and is a resident of the city and county of New York; that Joseph Samuels was, and is a resident of the city and county of New York; that Abraham Samuels was and is a resident of the city and county of New York; that Reuben Samuels was and is a resident of the city and county of New York, and that Ray Abrahams was and is a resident of the city and county of New York; that Herman J. Dietz was and is a resident of the city and county of New York;

15 that Isaac Anderson was and is a resident of the city and county of New York; that Charles Hepner was and is a resident of the city and county of New York; that Herman H. Oppenheimer was and is an attorney at law in the city of New York, with offices at 170 Broadway, city and county of New York; that on the fifteenth day of June, nineteen hundred and twelve, and continuously on all other days thereafter to and including the 24th day of February, in the year of our Lord one thousand nine hundred and fourteen, in the county of New York, Southern District of New York, and within the jurisdiction of this court and under the circumstances aforesaid, the said Jacques Samuels and Joseph Samuels, copartners doing business as aforesaid, under the firm name of Joseph Samuels & Company, as aforesaid, and the said Abraham Samuels, Reuben Samuels, Ray Abrahams, Herman J. Dietz, Isaac Anderson, Charles Hepner, and Herman H. Oppenheimer then and there anticipated, contemplated, and planned that a petition in bankruptcy should thereafter be filed to have the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as a copartnership, adjudicated bankrupts under the bankruptcy laws of the United States; that thereafter, in the due course of the bankruptcy proceedings, a trustee for the estate in bankruptcy of the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as a copartnership, should be duly appointed.

And the grand jurors aforesaid, on their oath aforesaid, do further present that on the fifth day of August, nineteen hundred and twelve, a petition in bankruptcy was duly filed in the United States District Court for the Southern District of New York to have the said Jacques

Samuels and Joseph Samuels, doing business as aforesaid under

16 the firm name of Joseph Samuels & Co., individually and as copartners, adjudicated bankrupts; that on the 5th day of August, nineteen hundred and twelve, Alexander S. Webb was duly appointed receiver of the assets and effects of the said copartnership of the said Jacques Samuels and Joseph Samuels, copartners doing business as aforesaid, and of the individual estates of said Jacques Samuels and Joseph Samuels, and on the sixth day of August, 1912, the said Alexander S. Webb duly qualified as such; that on the 23rd

sign and deliver to said Jacques Samuels a certain promissory note, for the sum of forty-five hundred dollars (\$4,500.00), which said note was marked "Non negotiable," and was in words and figures as follows:

\$4,500⁰⁰/₁₀₀

NEW YORK, May 16, 1912.

Four months after date, I promise to pay to Joseph Samuels & Co., Forty-five hundred 00/100 dollars, at The Columbia Bank, 407 Bway, N. Y.

Value received

Non negotiable

No. ——— Due Sept. 16

H. J. DIETZ.

And further in pursuance of and to effect the object of said conspiracy, the said Isaac Anderson did, on June 17th, 1912, write his endorsement upon the back of a certain check drawn by said Jacques Samuels in the name of Joseph Samuels & Co., upon the Second National Bank of the City of New York, to the order of "I. Anderson" in the amount of three thousand dollars (\$3,000.00), which said check and said endorsement on the back of said check are as follows:

Face of check.

20 JOSEPH SAMUELS & CO.

No. 17

Braid and Embroideries.

NEW YORK, June 17, 1912.

Pay to the order of I. Anderson \$3,000⁰⁰/₁₀₀.

Three thousand 00/100 Dollars.

To the Second National Bank of the City of New York.

JOS. SAMUELS & Co.

Back of check.

Endorsements: I. Anderson, Jos. Samuels & Co., Harry Siegel.

And further in pursuance of and to effect the object of said conspiracy, the said Charles Hepner did, on July 25th, 1912, write his endorsement upon the back of a certain check drawn by the said Jacques Samuels in the name of Joseph Samuels & Co., upon the Pacific Bank in the city of New York, to the order of Charles Hepner in the amount of \$405.40, which said check and the endorsement upon the back of said check are as follows:

Face of check.

No. 160.

NEW YORK, July 25, 1912.

THE PACIFIC BANK,

Madison Avenue Branch—28th St.

Pay to the order of Charles Hepner Four hundred & five 40/100 dollars. \$405⁴⁰/₁₀₀.

JOS. SAMUELS & Co.

Back of check.

Jos. Samuels & Co. Charles Hepner.

21 And further, in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels did, on July 22nd, 1912, take from the funds of said copartnership of Joseph Samuels & Co., the sum of \$1,100.00, which said sum of money would, in the due course of the administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said copartnership, and did conceal and secrete the said sum of \$1,100.00 from said Alexander S. Webb, the trustee of said estate in bankruptcy.

And further, in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels did, on July 26th, 1912, take from the funds of said copartnership of Joseph Samuels & Co. the sum of \$2,500.00, which said sum of money would, in the due administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said copartnership, and did conceal and secrete the said sum of \$2,500.00 from said Alexander S. Webb, the trustee of said estate in bankruptcy.

And further, in pursuance of and to effect the object of said conspiracy, the said Herman H. Oppenheimer, on July 29th, 1912, received the sum of one thousand dollars (\$1,000.00) from the said copartnership of Joseph Samuels & Company; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided.

H. SNOWDEN MARSHALL,
United States Attorney.

22 (Endorsed:) 2462. 6-334—U. S. District Court. The United States of America vs. Jacques Samuels and Joseph Samuels, doing business under the firm name of Samuels & Co., Abraham Samuels, Reuben Samuels, Ray Abrahams, Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer, and Isaac Anderson. Indictment: Conspiracy to conceal assets from trustee in bankruptcy. Sec. 29b Bankruptcy Act, 37, U. S. C. X. H. Snowden Marshall, U. S. attorney. A true bill, Henry Lewis, foreman. U. S. District Court, S. D. of N. Y., filed Feb. 24, 1914.

Feb'y 25th, '14. H. H. Oppenheimer arraigned and pleads not guilty—leave to withdraw by M'ch 20/14. Bail, \$2,500.00.

Reuben Samuels arraigned and pleads n. g. Time to withdraw as above.

• Ray Abrahams, same entry as above.

Jacques Samuels, same entry as above.

Joseph Samuels, same entry as above.

Abraham Samuels, same entry as above.
 Chas. Hepner, same entry as above.
 Bail previously given to stand.
 Feb. 26, H. J. Dietz pleads not guilty.
 Feb. 27, Isaac Anderson pleads not guilty.
 May 1, 1914. Filed motion to quash.
 M'ch 24. Filed demurrer of H. H. Oppenheimer.
 Oct. 1. Filed opinion, Thomas, J. Demurrer sustained. Indictment dismissed as to H. Oppenheimer, A. Samuels, C. Hepner, R. Abrahams.

23 *Demurrer of Herman H. Oppenheimer.*

United States District Court, Southern District of New York.

THE UNITED STATES OF AMERICA

against

JACQUES SAMUELS AND JOSEPH SAMUEL, DOING BUSINESS UNDER THE FIRM NAME OF SAMUELS & CO., ABRAHAM SAMUELS, REUBEN SAMUELS, RAY ABRAHAMS, HERMAN J. DIETZ, CHARLES HEPNER, HERMAN H. OPPENHEIMER, AND ISAAC ANDERSON.

The above-named defendant, Herman H. Oppenheimer, demurs to the indictment in the above-entitled matter filed herein February 24th, 1914, and he demurs to each and every part of said indictment and alleges as ground for such demurrer:

First. That the said indictment fails to charge an offense under the laws of the United States against him.

Second. That it appears on the face of the indictment that any offense attempted to be charged against this defendant is barred by the statute of limitations.

Dated, New York, March 24, 1914.

KELLOGG & ROSE,
*Attorneys for Herman H. Oppenheimer, office
 and post office address, 115 Broadway,
 Borough of Manhattan, City of New York.*

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 24, 1914.

24 United States District Court for the Southern District of New York.

UNITED STATES, PLAINTIFF,
against

JACQUES SAMUELS, JOSEPH SAMUELS, REUBEN
Samuels, Abraham Samuels, Ray Abra-
hams, Charles Hepner, Isaac Anderson,
Herman J. Dietz, and Herman H. Oppen-
heimer, et al., defendants.

Motion to quash plea
in bar and abate-
ment on behalf of
Herman H. Op-
penheimer.

And now comes defendant, Oppenheimer, and moves this court to set aside the indictment filed in this case for that—

1. The indictment is barred by the statute of limitations contained in section 29d of the bankruptcy law of 1898.

2. The indictment does not set forth facts sufficient to constitute a crime under the laws of the United States now in force.

3. That the facts set forth in the indictment are indefinite and uncertain and do not inform the defendant sufficiently of the nature of the charge against him, as provided for by law.

4. The indictment does not charge a defense cognizable by this court or covered by the statutes of the United States of America.

5. This court has no jurisdiction over the crime attempted to be alleged and the person charged therewith.

25 6. That the grand jury that turned in the indictment has no jurisdiction to indict the defendant, Oppenheimer, for the subject matter stated in this indictment.

Wherefore the defendant, Oppenheimer, prays that the same may be dismissed as to him.

Dated New York, April 13th, 1914.

KELLOGG & ROSE,
Attorneys for Defendant, Oppenheimer,
Office and P. O. address, 115 Broadway,
Borough of Manhattan, New York City.

ABRAM J. ROSE, Esq.,
Of Counsel.

BENJAMIN SLADE, Esq.,
Of Counsel.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar 1, 1914.

District Court of the United States of America for the Southern District of New York.

At a stated term of the District Court of the United States of America for the Southern District of New York, begun and held in the city of New York, within and for the district aforesaid, on the first Tuesday of December in the year of our Lord one thousand nine hundred and fourteen, and continued by adjournment to and including the 21st day of December in the year of our Lord one thousand nine hundred and fourteen.

SOUTHERN DISTRICT OF NEW YORK, ss:

The grand jurors of the United States of America, within and for the district aforesaid, on their oath present, that during the year nineteen hundred and twelve, and up to and including the fifth day of August, nineteen hundred and twelve, Jacques Samuels and Joseph Samuels, late of the city and county of New York; were engaged in business at number 129 West 20th Street, in the city, county, and State of New York, as copartners, doing business under the firm name of Joseph Samuels & Co., as manufacturers and dealers in braids and embroideries, and kindred merchandise; that Jacques Samuels was and is a resident of the city and county of New York; that Joseph Samuels was and is a resident of the city and county of New York; that Abraham Samuels was and is a resident of the city and county of New York; that Herman J. Dietz was and is a resident of the city and county of New York; that Charles Hepner was and is a resident of the city and county of New York; that Herman H. Oppenheimer was and is an attorney at law in the city and county of New York, with offices at number 170 Broadway, city and county of New York; and was the attorney for said Joseph Samuels & Co., individually and as a copartnership as aforesaid; that on the fifteenth day of June, nineteen hundred and twelve, in the county of New York, southern district of New York, and within the jurisdiction of this court, the said Jacques Samuels and Joseph Samuels, copartners doing business as aforesaid, under the firm name of Joseph Samuels & Co., then and there anticipated, contemplated, and planned that a petition in bankruptcy should thereafter be filed to have the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as a copartnership, adjudicated bankrupts under the bankruptcy laws of the United States; and that thereafter, in the due course of the bankruptcy proceedings, a trustee for the estate in bankruptcy of the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as a copartnership, should be duly appointed.

And the grand jurors aforesaid, on their oath aforesaid, do further present that on the fifth day of August, nineteen hundred and twelve, a petition in bankruptcy was duly filed in the United States District Court for the Southern District of New York to have the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as copartners, adjudicated bankrupts; that on the fifth day of August, nineteen hundred and twelve, Alexander S. Webb was duly appointed receiver

of the assets and effects of the said copartnership, doing business as aforesaid, and of the individual estates of said Jacques

Samuels and Joseph Samuels, and on the sixth day of August, nineteen hundred and twelve, the said Alexander S. Webb, duly qualified as such; that on the twenty-third day of October the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as copartners, were duly adjudicated bankrupts by the said United States District Court; that on the fourth day of November, nineteen hundred and twelve, Alexander S. Webb was duly appointed trustee of the assets and effects of the estate in bankruptcy of the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., and of their individual estates, and the said Alexander S. Webb, on the thirteenth day of November, nineteen hundred and twelve, duly qualified as such, and thereafter continued to act as such trustee up to and including the 21st day of December, nineteen hundred and fourteen.

And the grand jurors aforesaid, on their oath aforesaid, do further present that the said Jacques Samuels and Joseph Samuels, on the fifteenth day of June, nineteen hundred and twelve, and continuously on all other days thereafter to and including the 21st day of December, nineteen hundred and fourteen, in the county of New York, Southern District of New York, and within the jurisdiction of this court and under the circumstances aforesaid, did wilfully, knowingly, and unlawfully conspire together, and with the said Abraham Samuels, Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer, and each of them, to commit an offense against the United States, that is to say, the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Herman J. Dietz, Charles Hepner, and

Herman H. Oppenheimer, did wilfully, knowingly, and unlawfully conspire and corruptly and fraudulently agree among themselves that they would knowingly, and fraudulently, while the said Jacques Samuels and Joseph Samuels, individually and as co-partners doing business as aforesaid under the firm name of Joseph Samuels & Co., should be bankrupts as aforesaid, conceal from the said trustee of the said estates in bankruptcy, certain properties and moneys, which would, in the due course of the administration of said estates in bankruptcy, belong to the said estates

in bankruptcy, to wit, certain moneys on deposit in banking institutions in the city of New York to the credit of said Jacques Samuels and Joseph Samuels, and of the said co-partnership Joseph Samuels & Co., to an amount upwards of one thousand dollars (\$1,000.00) and certain other moneys and choses in action which would thereafter become due from customers of the said co-partnership for merchandise sold to said customers by said co-partnership, and property consisting of certain shares of stock of the Borough Apartment Company, a corporation organized and existing under the laws of the State of New York, which said certificates of stock had been issued by the said Borough Apartment Co. in the names of the said Jacques Samuels and said Joseph Samuels, and were the property of said co-partnership of Joseph Samuels & Co., the value of said certificates of stock being upwards of the sum of one thousand dollars (\$1,000.00) and other property, the kind, amount, and particular description of which, and the exact amount and value of which is now to the grand jurors unknown; and the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer did, beginning with the said fifteenth day of June, nineteen hundred and twelve, conceal the aforesaid money and property belonging to the said co-partnership, and continued to conceal the same until the thirteenth day of November, nineteen hundred and twelve, when

30 said Alexander S. Webb was appointed trustee as aforesaid, and since said thirteenth day of November, nineteen hundred and twelve, did continue to conceal the same from said trustee up to and including the 21st day of December, nineteen hundred and fourteen.

And in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels, Abraham Samuels and Herman H. Oppenheimer did on or about the twenty-eighth day of June, nineteen hundred and twelve, in the county of New York, Southern District of New York, make and cause to be made, and counsel and advise the making of false and fictitious entries in a certain book called "time book" belonging and appertaining to the business of Joseph Samuels & Co., whereby it was made to appear that certain persons and employees, employed by said co-partnership had received from said co-partnership for their services more money than such persons and employees had actually received.

And further in pursuance of and to effect the object of said conspiracy, the said Abraham Samuels did, on or about the 28th day of June, 1912, in the county of New York, Southern District of New York, write up and cause to be written up a certain book called "time book" belonging to and pertaining to the business of Joseph Samuels & Company, whereby it was made to appear by the recording of false and fictitious entries therein that certain persons and

employees employed by the said co-partnership had received from said co-partnership for their services more money than such persons and employees had actually received.

31 And further in pursuance of and to effect the object of said conspiracy, said Jacques Samuels, said Joseph Samuels and said Herman H. Oppenheimer did, on or about June 20, 1912, destroy and cause to be destroyed and counsel and advise the destruction of a certain book of account belonging and appertaining to the business of said co-partnership of Joseph Samuels & Co., called "purchase ledger", and certain other books of account, the number and more particular description of which are now to the Grand Jurors unknown.

And further in pursuance of and to effect the object of said conspiracy, the said Herman J. Dietz, at the request and upon the advice of said Jacques Samuels and said Herman H. Oppenheimer, did, on or about June 28, 1912, sign and deliver to said Jacques Samuels a certain promissory note, for the sum of forty-five hundred dollars (\$4,500.00), which said note was marked "Non negotiable," and was in words and figures as follows:

\$4500 $\frac{0}{4}$ ¢.

NEW YORK, May 16, 1912.

Four months after date, I promise to pay to Joseph Samuels & Co. Forty-Five Hundred 00/100 dollars at The Columbia Bank, 407 Broadway, N. Y.

Value received.

Non negotiable.

No. —.

Due Sept. 16.

H. J. DIETZ.

For which promissory note no consideration was paid by said Joseph Samuels & Co., and was made and signed by said Herman J. Dietz for the purpose of making it to appear that the assets of the said estates in bankruptcy were greater than they actually were, as the said Jacques Samuels and the said Herman H. Oppenheimer well knew.

32 And further in pursuance of and to effect the object of said conspiracy, the said Charles Hepner did, on July 25, 1912, write his indorsement upon the back of a certain check drawn by the said Jacques Samuels in the name of Joseph Samuels & Co., upon the Pacific Bank in the City of New York, to the order of Charles Hepner, in the amount of \$405.40, which said check and the indorsement upon the back of said check are as follows:

Face of check.

No. 160.

NEW YORK, July 25, 1912.

The Pacific Bank, Madison Avenue Branch—28th St.

Pay to the order of Charles Hepner Four hundred & five 40/100 dollars.

\$405 $\frac{40}{100}$ ¢.

JOS. SAMUELS & Co.

Back of check.

Jos. Samuels & Co. Charles Hepner.

And further in pursuance of and to effect the object of said conspiracy the said Jacques Samuels did, on July 22, 1912, take from the funds of said copartnership of Joseph Samuels & Co., the sum of \$1100.00, which said sum of money would, in the due course of the administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said copartnership and did conceal and secrete the said sum of \$1100.00 from said Alexandria S. Webb, the trustee of said estate in bankruptcy, and has since said 22nd day of July, 1912, continued to conceal said sum of money from said trustee, to and including the 21st day of December, 1914.

33 And further in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels did, on July 26, 1912, take from the funds of said copartnership of Joseph Samuels & Co. the sum of \$2,500.00, which said sum of money would, in the due administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said copartnership, and did conceal and secrete the said sum of \$2,500.00 from said Alexander S. Webb, the trustee of said estate in bankruptcy, and has, since said 26th day of July, 1912, continued to conceal said sum of money from said trustee up to and including the 21st day of December, 1914.

And further, in pursuance of and to effect the object of said conspiracy and in order to aid and assist the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Charles Hepner, Herman J. Dietz, and Herman H. Oppenheimer, in continuing the concealment from said trustee in bankruptcy of the money and property belonging to the said estates in bankruptcy of the said Joseph Samuels & Co., so concealed from said trustee in bankruptcy, the said Herman H. Oppenheimer, in a bankruptcy proceeding instituted and pending in the United States District Court for the Southern District of New York, to have the said Jacques Samuels and one Benjamin Lesser, individually and as copartners, doing business under the firm name of Abrahams & Lesser, adjudged bankrupts under the bankruptcy laws of the United States, and of which copartnership the said Jacques Samuels was a member and principal owner, was examined before the said Macgrane Cox, Esquire, referee in bankruptcy, in support of an application made by the said Herman H. Oppenheimer for an allowance as the attorney for the said copartnership of Abrahams & Lesser and the said Jacques Samuels as a member of said copartnership; and the said Herman H. Oppenheimer

34 did, then and there, on the 19th day of January, 1914, willfully and falsely testify, in substance and effect, that he had, since the latter part of July, 1912, and up to the said 19th day of January,

1914, received no money or property in said bankruptcy action so pending against Joseph Samuels & Co., individually and as a copartnership as aforesaid, as compensation for legal services, except that he, the said Herman H. Oppenheimer, had received an agreement to be paid compensation in addition to whatever allowance might be made to him by the court for such services out of the estates in bankruptcy of said Joseph Samuels & Co., individually and as a copartnership, as aforesaid, whereas, in truth and in fact, the said Herman H. Oppenheimer did, on or about the 1st day of September, 1912, receive from the said Jacques Samuels a promissory note in and for the sum of \$897.36, with interest, made by the Universal Textile Company, a customer of said Joseph Samuels & Co., dated July 20, 1912, payable two months after date, to the order of Joseph Samuels & Co., and did thereafter, on September 11, 1912, receive payment therefor in the sum of \$897.36, which said promissory note and its proceeds was the property of the said copartnership of Joseph Samuels & Co. and would, in the due administration of the said estates in bankruptcy, have belonged to the said estates in bankruptcy; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (§37 U. S. C. C. and §29 b of the bankruptcy act.)

H. SNOWDEN MARSHALL,

U. S. Attorney.

35 (Endorsed:) 7-278, 2882. U. S. District Court, The United States of America vs. Jacques Samuels, Joseph Samuels, Abraham Samuels, Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer. Indictment: Conspiracy to conceal assets from trustee in bankruptcy. U. S. C. C. Sec. 37 and Sec. 29-b, Bankruptcy Act. H. Snowden Marshall, U. S. attorney. A true bill: Eugene S. Benjamin, foreman. U. S. District Court, S. D. of N. Y. Filed Dec. 21, 1914.

1914, Dec. 22. Oppenheimer pleads not guilty. Bail, \$500.

1915, Jan. 4. Deft. Dietz pleads not guilty. Bail, \$2,500.

Jan. 4. Filed motion to quash; plea in abatement; plea in bar and demurrer as to H. H. Oppenheimer.

Jan. 6. Filed demurrer and motion to quash, and special plea in bar as to H. J. Dietz.

Jan. 20. Dietz withdraws plea of not guilty.

Jan. 21. H. H. Oppenheimer withdraws pleas of not guilty.

Jan. 30. Filed joinder in demurrer.

1916, Feb'y 2. Filed opinion. Pope, J. Indictment ordered quashed and allowing defendants to go without day thereunder.

United States District Court, Southern District of New York.

THE UNITED STATES OF AMERICA

against

JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM SAMUELS, } 7-237
HERMAN J. DIETZ, CHARLES HEPNER, and HERMAN
H. OPPENHEIMER.

Demurrer.

And now comes the defendant, Herman H. Oppenheimer, and moves this court to set aside the indictment filed in this case for the following reasons:

1. It appears from the records of this court that the indictment herein is barred by reason of the adjudication in re United States against the same parties who are defendants in this indictment, numbers 2461 and 2462.

2. The indictment is barred by the statute of limitations contained in section 29-d of the Bankruptcy Law of 1898. The indictment does not set forth facts showing it to be a continuous conspiracy, down to its date.

3. The indictment does not set forth facts sufficient to constitute a crime under the laws of the United States now in force.

4. That the facts set forth in the indictment are impossible, indefinite, and uncertain, augumen'tive, hypothetical, and do not inform the defendant sufficiently of the nature of the charge against him, as provided for by law.

37 5. The indictment does not charge an offense cognizable by this court or covered by the statutes of the United States of America.

6. That the grand jury, when it voted this indictment, had no evidence before it showing the commission of the crime and the overt acts charged in the said indictment, against said defendant, Oppenheimer, and did not have competent legal evidence as to either or both, and the same more fully appears by the records of the said grand jury and more particularly from the facts that the said indictment alleges that the defendant, Oppenheimer, gave certain false and fraudulent testimony on January 19th, 1914, and there was no legal or competent evidence before the said grand jury that he had so testified, and there never was such testimony given by said defendant, Oppenheimer.

7. That the grand jury, when it voted this indictment, had no evidence before it showing the commission of the crime and the overt acts charged in the said indictment against said defendant, Oppenheimer, and did not have competent legal evidence as to either or both, and the same more fully appears by the records of the said

grand jury and more particularly from the facts that the said indictment charges the defendant, Oppenheimer, with having received payment of a note given to him by the bankrupt during September 1912. There was no competent legal evidence before the said grand jury of the said fact.

8. That the grand jury, when it voted this indictment, had no evidence before it showing the commission of the crime and the overt acts charged in the said indictment against the said defendant,

38 Oppenheimer, and did not have competent legal evidence as to either or both, and the same more fully appears by the records of the said grand jury and more particularly from the facts that the said indictment charges that the defendant, Oppenheimer, conspired with various persons and there was no competent legal evidence before the grand jury of the creation or existence of the said conspiracy.

9. The said grand jury which voted the said indictment was improperly constituted and the members thereof were not proper persons to pass on the said indictment, at least one of them being interested in the subject matter thereof, as a creditor, and the said juror was present while the witnesses were being heard, and as defendant believes, during the deliberations and voted upon the said indictment, which fact was known to all of the said grand jurors who voted on the said indictment, in contravention to the statutes of the United States, now in force in reference to qualifications of grand jurors and to the self-evident injury and harm of the defendant, Oppenheimer.

Wherefore, the said Herman H. Oppenheimer prays judgment of the said indictment whether the United States of America ought or can prosecute him in the premises and that he may be discharged thereof without delay and the indictment quashed.

New York, January 4th, 1915.

KELLOGG & ROSE,
Attorneys for defendant, Oppenheimer,
Office & P. O. Address,
115 Broadway, Manhattan,
New York City.

ABRAM J. ROSE, *of Counsel.*
BENJAMIN SLADE, Esq., *of Counsel.*

39 We hereby certify that the foregoing plea is not interposed for delay but should be sustained on the merits.

NEW YORK, January 4th, 1915.

KELLOGG & ROSE,
Attorneys for defendant, Oppenheimer.

(Endorsed:) Received Jan. 4, 1915, U. S. Attorney's Office. U. S. District Court, S. D. of N. Y. Filed Jan. 4, 1915.

40 United States District Court, Southern District of New York.

THE UNITED STATES OF AMERICA,
against

JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM SAMUELS, HERMAN J. DIETZ, CHARLES HEPNER, AND HERMAN H. OPPENHEIMER. } No. 7-237.

Motion to quash on behalf of Herman H. Oppenheimer.

And, now comes the defendant, Herman H. Oppenheimer, and moves this court to set aside the indictment filed in this case for the following reasons:

1. It appears from the records of this court that the indictment herein is barred by reason of the adjudication in re United States against the same parties who are defendants in this indictment, numbers 2461 and 2462.

2. The indictment is barred by the statute of limitations contained in section 29-d of the Bankruptcy Law of 1898.

3. The indictment does not set forth facts sufficient to constitute a crime under the laws of the United States, now in force.

4. That the facts set forth in the indictment are impossible, indefinite and uncertain and do not inform the defendant sufficiently of the nature of the charge against him, as provided for by law.

5. The indictment does not charge an offense cognizable by this court or covered by the statutes of the United States of America.

41 6. That the grand jury, when it voted this indictment had no evidence before it showing the commission of the crime and the overt acts charged in the said indictment, against said defendant, Oppenheimer, and did not have competent legal evidence as to either or both and the same more fully appears by the records of the said grand jury and more particularly from the facts that the said indictment alleges that the defendant, Oppenheimer, gave certain false and willful testimony on January 19th, 1914, and there was no legal or competent evidence before the said grand jury that he had so testified, reference being made to the affidavits of H. H. Oppenheimer and Herbert A. Mossler hereto annexed, and there never was such testimony given by said defendant, Oppenheimer.

7. That the grand jury, when it voted this indictment had no evidence before it showing the commission of the crime and the overt acts charged in the said indictment against said defendant, Oppenheimer, and did not have competent legal evidence as to either or both and the same more fully appears by the records of the said grand jury and more particularly from the facts that the said indictment charges the defendant, Oppenheimer, with having received payment of a note given to him by the bankrupt during September,

1912. There was no competent legal evidence before the said grand jury of the said fact.

8. That the grand jury, when it voted this indictment had no evidence before it showing the commission of the crime and the overt acts charged in the said indictment against said defendant, Oppenheimer, and did not have competent legal evidence as to either or both and the same more fully appears by the records of the said grand jury and more particularly from the facts that the said indictment alleges that the defendant, Oppenheimer, conspired with various
42 persons and there was no competent legal evidence before the grand jury of the creation or existence of the said conspiracy.

9. The said grand jury which voted the said indictment was improperly constituted and the members thereof were not proper persons to pass on the said indictment, at least one of them being interested in the subject matter thereof as a creditor, and the said juror was present while the witnesses were being heard, and as defendant believes, during the deliberations, and voted upon the said indictment, which fact was known to all of the said grand jurors who voted on the said indictment, in contravention to the statutes of the United States now in force in reference to qualification of grand jurors and to the self-evident injury and harm of the defendant, Oppenheimer.

Wherefore the said Herman H. Oppenheimer prays judgment of the said indictment whether the United States of America ought or can prosecute him in the premises and that he may be discharged thereof without delay and the indictment quashed.

NEW YORK, January 4th, 1915.

KELLOGG & ROSE,

Attorneys for Defendant Oppenheimer,

O. & P. O. address, 115 Broadway, Manhattan, New York City.

ABRAM J. ROSE, Esq.,

Of Counsel.

BENJAMIN SLADE, Esq.,

Of Counsel.

We hereby certify that the above plea is not interposed for delay, but should be sustained on the merits. Dated, New York, January 4th, 1915.

KELLOGG & ROSE,

Attorneys for Defendant Oppenheimer.

43 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA,

against

JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM SAMUELS, Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer.

No. 7-237.

UNITED STATES OF AMERICA,

Southern District of New York,

State, City, and County of New York, ss:

Affidavit on motion to quash.

Herman H. Oppenheimer, being duly sworn, deposes and says:
That he is one of the defendants herein.

That deponent never gave any evidence in any proceeding as stated in the last paragraph of the indictment herein, as more fully appears by a copy of the said testimony hereto annexed and made part hereof.

Deponent never signed the said testimony, nor were the hearings in the matter in which it was given closed, nor was the said testimony complete, all of which fully appears by the said testimony, and therefore deponent believes no valid indictment can ever be based on the said testimony.

The only persons present at the said hearing besides deponent were Honorable Macgrane Cox, the referee; Frank C. McCarrick, the stenographer; Mr. Herman Heidelberg, Mr. Thomas Adams, and Mr. Grenville Clark. Your deponent has asked Herman Heidelberg,

44 Thomas Adams, and Mr. Grenville Clark whether they appeared before the grand jury that found the present indictment in December, 1914, and all of them replied that they had not appeared and had given no testimony, and the only other persons who were present at the said examinations and who could testify to what was said thereat or identify the minutes thereof were the stenographer and referee, and they have denied that they have appeared before the grand jury who found the indictment, as more fully appears by the affidavit of Herbert A. Mossler, hereto annexed.

Wherefore, your deponent believes that no evidence whatever was given of testimony by deponent legally before the said grand jury.

Deponent further says that the statement in the last paragraph of the indictment to the effect that the said defendant, Oppenheimer, received payment of a certain note, deponent has asked all the persons who have knowledge of the same as to whether they appeared before the grand jury who found this indictment, and they have all stated to deponent that they have not appeared before the said grand jury,

and deponent believes, therefore, that there was no legal evidence of the payment of the said note to deponent before the grand jury.

Deponent further says that he is informed and believes that the only witnesses who appeared before the grand jury that found this indictment were alleged coconspirators and deponent believes that their testimony is insufficient on which to find an indictment for conspiracy, their declarations and acts or confessions being in law insufficient to establish the creation and existence of a conspiracy.

45 Deponent further says that one of the members of the said grand jury who found this indictment is a creditor of the Borough Apartment Realty Co., a corporation conducted entirely by the bankrupts, and referred to in the present indictment, in paragraph 4 thereof, as being part of the transferred and concealed assets and that the said person by reason of being a creditor of the said corporation alleged to be owned and directed by the bankrupts was an improper person to serve as a juror in this case, and deponent is informed and verily believes that the said person was present throughout the proceedings, took part in the deliberations and vote on the present indictment.

That the name of the said person is at present unknown to your deponent, but deponent can obtain the same through subpoenaing the members of the said grand jury and others who have refused to divulge the said juror's name or have forgotten the same.

HERMAN OPPENHEIMER.

Sworn to before me this 31st day of December, 1914.

J. CARL BECKER,
Com. of Deeds, New York City.

46 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA

against

JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM
SAMUELS, HERMAN J. DIETZ, CHARLES HEPNER, AND
HERMAN H. OPPENHEIMER.

No. 7-278.

UNITED STATES OF AMERICA,

Southern District of New York,

State, city, and county of New York, ss:

Affidavit on motion to quash.

Herbert A. Mossler, being duly sworn, deposes and says:

That he is a clerk in the office of Herman H. Oppenheimer.

That during the month of December, 1914, he asked one Frank C. McCarrick, the stenographer referred to in the annexed affidavit of

Herman H. Oppenheimer, whether he had appeared before the grand jury of the United States District Court for the Southern District of New York, and the said Frank C. McCarrick told your deponent that he had not appeared before the said grand jury during the said month.

Deponent then asked said McCarrick to make an affidavit to that effect, but said McCarrick refused to do so, stating that he did not wish to be connected with the matter.

Deponent also asked Mr. Macgrane Coxé, the referee in charge of the proceedings of Abraham & Lesser, whether he had testified before the grand jury of this court during the month of December, 1914, and Mr. Coxé said he had not appeared or testified, and
47 deponent then asked whether the said referee would make an affidavit to the same, and said referee, Macgrane Coxé, replied that deponent could make his affidavit to the said effect.

HERBERT A. MOSSLER.

Sworn to before me this 31st day of December, 1914.

J. CARL BECKER,

Com. of Deeds, New York City.

(Indorsed:) Received Jan. 4, 1915. H. Snowden Marshall, U. S. Attorney. U. S. District Court, S. D. of N. Y. Filed Jan. 4, 1915.

48

Additional affidavit on motion to quash.

United States District Court, Southern District of New York.

UNITED STATES OF AMERICA,

against

JACQUES SAMUELS, HERMAN H. OPPENHEIMER,
et al.

No. 7-278.

Affidavit.

UNITED STATES OF AMERICA,

Southern District of New York,

State, City, and County of New York, ss:

Herbert A. Mossler, being duly sworn, deposes and says:

That he is a clerk in the office of Herman H. Oppenheimer.

That on the 13th day of January, 1915, he was informed by Honorable Macgrane Coxé, referee in charge of the case of Joseph Samuels & Co., and the referee who was present at the taking of the examination of Herman H. Oppenheimer, which is more fully referred to in the indictment in this court, numbered 7-278, that the said referee had at no time issued any duly authenticated copies of the testimony taken at the examination of the said Herman H. Oppenheimer on January 19, 1914, nor had he issued any certified copies or other copies of it with the certificate of its correctness.

Your deponent made inquiry of said referee and his clerks and the stenographer whether any legally certified copies of the said record had been issued and was informed that there was never any issued.

The said referee is the person who has charge of said record
49 and the only person who can legally certify the same.

HERBERT A. MOSSLER.

Sworn to before me this 12th day of January, 1915.

J. CARL BECKER,
Com. of Deeds, N. Y. City.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Feb. 4, 1916.

50 *Exhibit submitted part of motion to quash.*

United States District Court, Southern District of New York.

IN THE MATTER OF JACQUES SAMUELS AND BENJAMIN LESSER, INDIVIDUALLY AND AS COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF ABRAHAMS & LESSER, BANKRUPT.

Before Macgrane Cox, Esq., referee in bankruptcy.

NEW YORK, *January 19th, 1914, 2 p. m.*

Hearing on application for allowance to the attorney for the bankrupt. Appearances: Grenville Clark, Esq., attorney for creditors; Herman H. Oppenheimer, Esq., attorney for the bankrupt; Thomas D. Adams, Esq., attorney for creditor; Herman Heidelberg, Esq., representing the Security Bank, and creditor in person.

The application for an allowance to the attorney for the bankrupt and also affidavit of due notice of this meeting are on file.

51 **THE REFEREE.** This is an application for an allowance to the attorney for the bankrupt for services and for disbursements. Counsel, of course, is entitled to some allowance. The statute and the rules of this district have limited the amount somewhat, and the rules provide that creditors should be notified of such applications. Does any creditor desire to be heard on the subject?

Mr. CLARK. I appear for the Lincoln Trust Company, your honor, in opposition to the application for allowance, and I would like the privilege of asking Mr. Oppenheimer some questions about his petition.

HERMAN H. OPPENHEIMER, the petitioner, being duly sworn, testifies as follows:

Examined by Mr. CLARK:

Q. When were you first employed by the firm of Joseph Samuels & Company, Mr. Oppenheimer?

A. You mean the Samuels & Lesser concern, now, in which the allowance is being made, or Joseph Samuels & Company, as you say?

Q. Abrahams & Lesser?

A. In the bankruptcy proceedings, you mean?

Q. At any time.

A. The first time about April 25th, 1912.

52 Q. And have you received any payment from the firm of Abrahams & Lesser or from Jacques Samuels or Benjamin Lesser, in contemplation of bankruptcy proceedings?

A. No.

Q. You did receive certain payments from the firm of Joseph Samuels & Company at the end of July, 1912, did you not?

A. Yes.

Q. How much was that?

A. About \$1,200.

Q. And the date?

A. But that had nothing to do with the bankruptcy proceedings. The date, I don't know exactly. It was in July. You had the date from the check book.

Q. The latter part of July?

A. Yes, sir.

Q. You say those payments were made on account of prior services?

A. Yes.

Q. Now you state somewhere in your petition that you had received no compensation whatever for the work referred to in your petition. Do you mean that you have received no compensation whatever from the bankrupt firm, or from either of its members, either before or since bankruptcy?

A. Yes.

Q. That you have received no payment of any kind, or in any form, since the bankruptcy for the work which you have done?

A. Yes; that is correct.

Q. By payment of money, or transfer of property, or in any other manner?

53 A. Yes; in the matter of Abrahams & Lesser.

Q. Or in the matter of Joseph Samuels & Company?

A. Oh, that has nothing to do with this.

Q. Well, have you received any?

A. I have not received any money or any property. I have received an agreement to be paid compensation besides what I will get in the matter of Joseph Samuels & Company, but not in the Abrahams & Lesser matter.

Q. Have you received any compensation for services rendered in the Samuels bankruptcy?

A. No.

Q. In any form or manner?

A. Well, just as I explained to you, an agreement to be paid a fee outside of what I get from the bankruptcy estate.

Q. And what is that agreement?

A. Well, I object to that. It is not relevant here, I submit to the court, an agreement in the Joseph Samuels & Company matter, to be paid a fee from my client outside of bankruptcy, and without reference to what I was to get from the estate.

Mr. CLARK. I will waive that question for the moment, your honor.

Q. Now I want to take up with you the separate paragraphs of your petition. You state in paragraph 2 "There have been about twenty examinations of the bankrupts and others before Commissioner Gilchrist and the referee herein." Do you not know as a matter of fact that there have been no examinations whatever of the bankrupts and others in this proceeding?

A. No; I do not. I thought the examinations that took place before Mr. Gilchrist were entitled in both these matters.

Q. And if the record shows, and the fact is, that the examinations here held in the Samuels & Company bankruptcy, you would abide by that record?

A. I would say that the facts gone into were the facts concerning this case here to a great extent, yes, and it was so treated by us as sort of a joint examination, because there were some twenty in the combined thing in the two matters.

Q. And you say in paragraph 2 that "there have been about thirty adjournments of various meetings had with your deponent after consultations with the attorneys for the receiver," and so forth. Those adjournments refer also to proceedings in the Samuels & Company bankruptcy?

A. No; they refer to proceedings before the referee in the Abrahams & Lesser matter, and also before the court in the various matters which were involved in Abrahams & Lesser.

Q. You are aware, of course, that these two estates must be separately administered, that their funds are separate, and that payment for services rendered in the Samuels bankruptcy should not be made out of the funds of Abrahams & Lesser, are you not?

A. So far as possible I think the court will administer them in that way, and I have tried to keep them separate, as far as possible. They are so interwoven that it is impossible to keep them absolutely separate, one member of the firm of Joseph Samuels & Company being a member of the firm of Abrahams & Lesser.

Q. In paragraph 3 you state that "there have been at least fifty consultations with each of the bankrupts in going over their affairs." Do you mean by that that you have consulted at least fifty times with Benjamin Lesser?

A. No; with Benjamin Lesser probably fifteen times; with Jacques Samuels probably three hundred times; so I say thirty-five of them were in reference to the matters regarding Abrahams & Lesser.

Q. In paragraph 4 you say "there have been at least two hundred telephonic communications with creditors or their attorneys," and so forth, and that "you have attended at the office of the referee and the United States District Court on a number of motions and proceedings and also at the office of the attorney for the receiver," and so forth, "where examinations were conducted." You are aware,

56 are you not, that those hearings were held under the title and actually in the Samuels bankruptcy proceeding?

A. No; they are chargeable, I think, as an attorney to both estates. It involved a question of a partnership in Abrahams & Lesser, the estate here in question, and I attended at Mr. Clark's office a large number of times in reference to that. Now, if the benefits are going to the creditors of Abrahams & Lesser, the benefits of these examinations—and I think there will be benefits—the estate of Abrahams & Lesser ought to pay for it to the estate of Joseph Samuels & Company, and it should be divided equitably between them.

Q. The object of those hearings were not to create any assets for the estate of Abrahams & Lesser, was it?

A. Yes; in some part it was. The object of those hearings being to recover about \$100,000 from a claimed partner, if Samuels & Company's claim is satisfied by that recovery, it will increase the amount of the estate of Abrahams & Lesser, or reduce the amount of the claims against the estate of Abrahams & Lesser by that extent, at least \$100,000 or \$70,000, whatever you settle it for.

Q. You are aware, are you not, that the endeavor was to create a cause of action in favor of the Samuels estate alone?

A. Which would reduce the Samuels claim against Abrahams & Lesser, Mr. Clark, and thereby increase the rights of
57 each creditor of Abrahams & Lesser and the assets in the estate of Abrahams & Lesser.

Q. It would not in fact affect the liability of the other partner of Abrahams & Lesser, would it, or reduce the claim against the Abrahams & Lesser estate in any way?

A. Absolutely. The claim filed by the trustee of Joseph Samuels & Company against the estate of Abrahams & Lesser would have to be wiped out.

Q. Now in paragraph 6 you say that you have written a large number of letters, numbering about two hundred; that you have prepared schedules, which were not the ordinary schedules, for reasons which you specify, and so on. Now is it true that you wrote two hundred letters concerning the affairs of this estate?

A. I say about two hundred. It may have been about three hundred. I have written to any number of creditors and attorneys in reference to this matter a number of times.

Q. Those letters also related to the affairs of Samuels & Company?

A. No; in speaking of the letters now it would be in reference to the estate of Abrahams & Lesser more particularly, although many of the creditors are also creditors of both estates, and they might inquire in one or the other.

58 Q. And you would be willing to produce those letters, I presume?

A. Those that I have copies of. I don't keep copies of everything and every letter or telephonic communication of that kind.

Q. Do you know if you have copies of the letters which you wrote in connection with this estate?

A. No; I don't think so. I just said I didn't keep copies of letters of that kind.

Q. But you would remember to whom those were written of which you do not have copies?

A. I probably could find that out; yes, I keep a letter book, and I could probably find out.

Q. In paragraph 7 you state that you "had to draw up a mass of legal papers in addition to those necessary for the purpose of attempting to effect a settlement herein and to follow them up by attendance in court and elsewhere." Now will you specify what those papers were?

A. Yes. If you want a statement, I will make a statement up for you in detail. I can't give it to you all now.

Q. As a matter of fact, haven't the legal proceedings in the Abrahams & Lesser estate as distinct from the Joseph Samuels & Company estate been very few?

59 A. At least entirely separate, yes; but, as I say, the same thing applies here; they are both so interwoven with each other.

Q. So when you refer to the mass of legal papers, you would say including papers which contained the Samuels & Company matter?

A. Not all of them; part of them, yes; where they refer to the Abrahams & Lesser matter.

Q. And you are making claim out of this estate for drawing papers in the Samuels matter?

A. I want to have it separate where it is possible.

Q. And of course it must be with regard to legal papers aside from those in the composition?

A. Well, I don't think so in each case.

Q. Well, you will submit copies of the papers which you have drawn in connection with the Abrahams & Lesser estate, will you?

A. Yes.

Q. In paragraph 9 you state that to set forth the work done herein in detail would take at least forty or fifty pages, and as a great part of it consisted in attention to legal matters appearing before the referee and the court, you refer to the records of the referee and the court, and you will be willing to abide by the records of the referee and the court in the Abrahams & Lesser bankruptcy to show what matters you attended to?

A. And the matters in the Joseph Samuels & Company case
60 where they are so connected that the charge ought to be against the Abrahams & Lesser estate.

Q. And the only way in which they were connected was in the composition proceedings; isn't that so?

A. No. As I said before, they were seriously connected in these ten or twenty hearings at your office, and any number of adjournments, where we were trying to recover this large sum for the creditors, and in the examinations in reference to the Cohen matter, where there was about \$15,000 collected, where I was informing and assisting the trustee all through those examinations.

Q. And you wish to be understood as saying that there were ten to twenty hearings at my office in connection with where testimony was taken?

A. In my opinion, there must have been at least ten meetings, either at your office or at the referee's office, from where it was adjourned, or at Mr. Dittenhoefer's office—I mean in the Valentine matter. There were at least ten, in my opinion, and I think more than that, examinations that I attended.

Q. In paragraph ten you refer to proceedings you took to disallow or reduce certain claims, took testimony, etc. There you would, of course, be willing to abide by the record in this office to show just what was done?

A. If the record shows my name as appearing. I believe I
61 appeared there for the trustee, and if I appeared for the trustee my name may not have been put in the record, but I conducted the entire proceedings to reduce or strike out the claims from the files, and also in the special examination does not appear, but I conducted the first half dozen examinations, I think, and then Mr. Clark and I took it up.

Q. You conducted the examinations of all the witnesses except Valentine and Fox, as I recollect it?

A. I didn't even know that Valentine and Fox had been examined. I wasn't at those examinations, and didn't take part in them.

Q. And all other examinations you conducted?

A. One examination of Valentine I was at, but it wasn't in this proceeding direct, and in the other examinations, you conducted

them, and I conducted a number of them. I assisted the trustee in getting the facts.

Q. You asked the questions?

A. I asked the questions, and went over the testimony with the witnesses, so they would be able to assist the trustee in a proper manner.

Q. Now, you took proceedings to reduce claims in the Samuels & Company bankruptcy, did you not?

A. Yes, sir.

Q. Most of the claims that you took proceedings to reduce were against the Samuels estate?

A. Some of them were against both estates.

62 Q. In paragraph 11, you state that you have "examined the claims filed herein, numbering over one hundred and fifty, and gone over same carefully for the purpose of informing the trustee," and so forth. There you would, of course, abide by the records of this office and the claim book with regard to the accuracy of that statement?

A. Oh, no; they wouldn't have a statement here that I examined the claims, but I was here ten or fifteen times, and not once.

Q. With regard to the accuracy of the number of claims stated by you?

A. In regard to the number of claims filed, of course the records of the referee is absolutely controlling, and I did not mean to say any more than that, if there are any more; but I think, as I recall, there were nearly that many claims.

Q. Did you look it up before you verified the petition?

A. I depended upon my memory to a great extent.

Q. And the same applies, in general, to the statement of about what you did in this estate?

A. In general, yes; it is a general petition, because I thought to draw forty or fifty pages, and give each one in detail would be a waste of time.

Q. But I am asking you what means you took to get the information on which you made the petition?

63 A. I either personally attended to these matters or directed others in their attention to it.

Q. But did you look up any records in regard to getting the information on which you base this petition?

A. Any records in the referee's office or the court, I would say no. I depend on the papers in my office, to a great extent.

Q. And your recollection?

A. And my recollection.

Q. And you gave your best recollection, I suppose?

A. Yes.

Q. Paragraph 12 you say that you "obtained orders from the district court for stays and various actions and proceedings brought against the bankrupts." Will you specify in what instances you did that?

A. Well, I will give you a complete statement if you want me to. I have one or two of them here with me. There is the case of Abraham H. Blank against Barney J. Abrahams, and there were probably, I should say, at least five, and maybe eight or nine actions commenced against the various parties which were stayed on my application. One of them at least was contested.

Q. And you will furnish a list of those?

A. Yes.

Q. And you will, of course, abide by the records of the district court as to the cases in which you obtained stays?

A. Certainly.

64 Q. In paragraph 14 you state that you have spent at least two full weeks in going over the books of the bankrupt with accountants and others, for the purpose of ascertaining the true condition, and in order to explain the difference in the assets as shown at the time of the failure and various statements given by the bankrupt, and you spent thirty other days in this work, for reasons which you state. Did you spend two weeks in going over the books of Abrahams & Lesser with accountants?

A. Yes.

Q. And with whom?

A. The accountant in the matter, Mr. Nemerov and Mr. Schreier, another accountant, who had two interviews with me concerning it.

Q. Anybody else?

A. Well, only your accountant. I spoke to him several times in regard to the matter.

Q. Who is Mr. Schreier?

A. Another accountant of the firm of Schreier & Hecht, certified public accountants in this city.

Q. And that was in connection with the turnover proceedings?

A. No, that was in connection with the loss of moneys, in a general way, in the Abrahams & Lesser business, and to the financial statement made in that case, and arrive at the amount of merchandise, and so on.

Q. And to the financial statement made by Abrahams & Lesser?

65

A. Yes.

Q. What financial statement?

A. The financial statement made by Abrahams & Lesser on October 28th or 29th, or some date like that, in 1911, about which there has

been a mass of testimony taken—how it was made up, when it was made up and so forth.

Q. You mean taken in the turnover proceedings?

A. In the turnover proceedings, in the examination under section 21, and in the examinations before the referee, and in the private proceeding.

Q. When did you put in the two accountants to go over the books of Abrahams & Lesser?

A. At various times; started in just before the bankruptcy, within about five days before the bankruptcy at a time the bankers and Samuels were having conferences. No, it was even within more days before that, at the time Mr. Valentine was to raise money to keep this business going.

Q. When was that?

A. Around July 20th.

Q. You had interviews with him then?

A. Who?

Q. Valentine?

A. Yes, I had interviews with Valentine with reference to keeping the business going since July 1, should say the 10th, the week before the Rosenthal murder.

66 Q. And during that week you were going over the books of Abrahams & Lesser with accountants, were you?

A. I wasn't all during that period. I had spoken to the accountants and went over general facts necessary for the purposes then under discussion. I got, for instance, a statement of the account with Valentine, had that made up, and explained exactly what I wanted to know about it.

Q. During July, 1912?

A. During July, 1912.

Q. Beginning about July 10th?

A. Yes.

Q. And did you ascertain the true condition?

A. Of what? Of the affairs of Abrahams & Lesser?

Q. Yes.

A. So far as I was able to, I think I did.

Q. What was it?

A. Their financial condition?

Q. Yes.

A. That they owed for merchandise about \$30,000; that they had obtained from Joseph Samuels & Company, or Jacques Samuels, the sum of about \$85,000 or \$90,000 more; and that their assets consisted of stock, machinery, outstanding accounts, which had cost them in the neighborhood of \$70,000 or \$80,000.

Q. So you found them solvent?

A. No; solvent if you take out the claim of Jacques Samuels for the money he had advanced to them.

Q. And when was that, that you found they were not solvent?

A. I found the condition I have just explained to you
67 between the 15th and 20th of July, 1912. I don't say that they were not solvent from their standpoint; Mr. Samuels being a member of that firm, if you take that account out, I believed them to be solvent and could have continued.

Q. Now did you examine the books of Samuels & Company in the same way? You say the affairs of the two concerns were intermingled?

A. I examined the books of Samuels & Company twice before the bankruptcy, once in the summer time, in July, I assume—I can't fix the date, except it was a warm day—and then again on the Thursday, Friday, and Saturday before the petition was filed. I want to say there four times, not twice, before the petition was filed.

Q. What was the first time again?

A. I think early in July, it must have been.

Q. Did you have any assistance?

A. Any assistance? I had the assistance of Mr. Jacques Samuels, Mr. Nemerov, and Mr. Siegel. And when I say examined there, I didn't mean to say that I sat down for four or five days and went over the details of those books. I examined the method of bookkeeping, and then asked various questions, which I asked them to take up for me.

Q. And what did you find their condition to be?

A. I found their condition to be, from the books, that they
68 owed also about \$33,000 for merchandise and about \$30,000 to banks, and that they had an immense liability as endorsers, a possible liability, against which they had as assets the original or primary liability of the makers of various notes and papers of various kinds, which they figured as absolutely good. Under those circumstances, I figured the same as they did, Mr. Samuels having repeatedly expressed that all these people would not hurt a hair of his head, meaning that they would pay up every dollar they owed as primarily liable, and I figured them as good, the same as the bankers, their individual creditors did, when they took them. I also counted on that in figuring later that way. And then their assets, on the other hand, consisted of a plant which they showed was worth over \$75,000, and outstanding accounts of about \$25,000, and the stock of goods, wares, and merchandise, and such things that cost them another \$50,000. I figured them as absolutely solvent by more than \$100,000 if these original people who had made out their notes and papers and given them to them, would pay.

Q. Did you verify their assets?

A. To a limited extent merely, by asking general questions, "What is your machinery account, and what is your merchandise account, and what are your outstanding accounts"? and such things. I didn't go through them. I never was in their factory but once prior to that.

Q. Had you rendered legal services to them before the month of July, 1912?

A. Joseph Samuels & Company?

Q. Yes.

A. Not for three years previous.

Q. When were you first consulted by them in 1912, or by any of the members of the firm?

A. Well, you mean in reference to the business of Joseph Samuels & Company?

Q. Well, I ask the general question.

A. I told you before. Mr. Jacques Samuels consulted with me about the affairs of his sister and one of the alleged partners of the business in the month of April, 1912. Previous to that, and from the month of January I should say, I had met Mr. Samuels half a dozen times socially, and he had told me that he was coming to my office to speak to me about something, but he never came, and he always told me he wanted to send down a lot of papers for me to look over. They proved afterwards to be these Valentine papers in this Valentine affair when he eventually came in June.

Q. At the time of the efforts to obtain money from Valentine, was there any intimation that the firm was in trouble?

A. No. Mr. Valentine as well as ourselves all figured that those notes that Valentine, vice-president of the Columbia Bank, and all the bankers held, were good. We had no reason at that time to believe differently. It was only after the Rosenthal murder, and this man Cohen demanded \$15,000 or Samuels life, that they gave up the \$15,000, that then the full extent of the liability on these endorsements became known.

Q. When was that?

A. About July 15th or the 20th. Up to that time we were figuring on positively keeping the business going, and Mr. Fox, the president of the Columbia Bank was about to assist.

Q. So there was a time I suppose in there that it became apparent that the thing was going to break up?

A. After the 20th.

Q. And after the 20th you accepted payment of \$1,235 from the bankrupt?

A. For the services I had rendered to the sister at the request of Jacques Samuels. After the close, no. I think I was paid before the 20th, before I knew of the insolvent condition.

Q. Have you a copy of the bill for which you were paid the \$1,200?

A. It must be in the office.

Q. And you will produce it?

A. Yes; I guess so, if you want it.

Q. Did you look at the notes which the bankrupts had
71 among their assets; that is, Joseph Samuels & Company?

A. No; I did not.

Q. In paragraph 15 you state that you appeared at the sale of the assets, and assisted the trustee in obtaining as large a price as possible, and spent a whole day at the sale, and previous thereto you had appeared at the private sale; that you had interviews, and had written letters and spoken to various persons in order to get large bids. Do you know who bought the property?

A. Yes—now let me go back to the last question, on the notes. While I didn't see any notes, I was given a general statement of it, not the details as to each. That statement was given to me first around the beginning of July, and the total of it was given to me as not more than \$60,000 or \$70,000 of all the people concerned. The true facts as to the amount of those notes came out a few days before the filing of the petition, about the 27th, 28th, or 30th of July, just before the filing of the petition, when we had a meeting up in Mr. Webb's office, the trustee, and it then came out that this mass of notes was among the banks. Mr. Samuels never counted it as a liability, and never mentioned it at all.

Q. And then you realized that he would have to make good on those notes, I suppose?

72 A. No; I had the promise of one of the makers of those notes in my office even the week previous to that, that Mr. Jacques Samuels, or Samuels & Company, or these firms would never lose a dollar of that money; that they had assets to pay, and the other one, Dietz, was supposed at that time to have had an immense amount of assets with which to pay also.

Q. Did you find in your examination of the affairs of the bankrupts either firm, Samuels & Company, or Abrahams & Lesser, prior to the bankruptcy, anything to lead you to believe that any assets had been concealed, or that any of their assets were not what they were represented to be, and apparently were?

A. I don't fully appreciate your question. Did I find any assets concealed? I would say to that, no.

Q. Did you find that any of the assets were not what they appeared to be? I refer particularly to the notes which are now in the trustee's hands?

A. Within three days of the bankruptcy, yes. Then I asked that I be given the pawn tickets which I had assumed for two weeks were in the possession of Mr. Samuels, pawn tickets of Mr. Dietz' in which

he was supposed to have an equity of over \$100,000. I then found that he never had them in his possession.

Q. Who bought in the assets at the public sale?

A. I think about fifty or sixty purchasers.

73 Q. Who bought in the plant?

A. I don't know that, Mr. Clark; some dress and waist manufacturer whose name I can get if you want me to, but he had no connection whatever with Mr. Lesser or Mr. Samuels, that I know of.

Q. Have you received from Joseph Samuels & Company, or from Jacques Samuels, or any member of his family, any transfer of property, any mortgage or other interest in property now held by them since the bankruptcy?

A. Not as payment for the fees in the Abrahams & Lesser matter, nor with any other understanding except that what fees are to be paid to me by the estate, that the agreement they gave me should be in addition to those fees.

Q. What is that agreement, a mortgage?

A. No. I didn't receive that from Samuels. I received that from Mr. Rosenthal, one of the creditors here, participation in a chattel mortgage, in which I am to be paid some fees starting December, 1914.

Q. And how much are those fees?

A. Well, I object to that, I don't think that is relevant or material. It is not in this matter, and it is in another matter, and when I apply for any allowance in that matter it may be relevant.

74 Q. But you have said the assets are intermingled, and it appears, does it not, that some of the matters which you mention in this petition are services rendered for the Samuels estate?

A. Yes, but I don't want any pay for the work rendered to the Samuels estate in this proceeding, now. If I ever make any other application, I shall disclose exactly what arrangements have been made for future payment, if I get any.

Q. Do you intend to make such an application?

A. I intend to place such an application on file, and disclose to the court what has been done to promise me some fees in the far distant future. This is not a first chattel mortgage, by any means. I come in above, and far and beyond the amount that Mr. Rosenthal paid for this property at the sale of the Samuels estate. He paid about \$15,000 for the plant, and I start in getting a share of it after about \$20,000 has been repaid to him.

Q. And you wish to be understood as testifying that you have not received since the bankruptcy any cash from any of the bankrupts or their family, as compensation for legal services.

A. Positively.

Q. Are you a relative of the bankrupts?

A. No; a nephew of one of the bankrupts married my niece.

75 Mr. Oppenheimer states that he has an engagement before Judge Mayer at 3 o'clock.

Mr. Clark states that he has some more questions to ask of Mr. Oppenheimer, and states that Mr. Oppenheimer is to produce certain statements, and asks that the hearing be adjourned.

Adjourned by consent to Friday, January 23, 1914, at 11.15 a. m.

76 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, PLAINTIFF,	} No. 7-278.
vs.	
HERMAN H. OPPENHEIMER ET AL., DEFENDANTS.	

Notice of motion.

SIRS: Please take notice that a motion will be made before the United States District Court for the Southern District of New York, in the United States courthouse & post-office building, at the term thereof for the hearing of criminal business, on Monday, the 25th day of January, 1915, at 10.30 o'clock in the forenoon, or as soon thereafter as counsel can be heard.

1. That the defendant, Herman H. Oppenheimer, be directed to elect which of the documents filed herein, entitled as follows:

- a. "Demurrer,"
- b. "Plea in abatement,"
- c. "Motion to quash on behalf of Herman H. Oppenheimer,"
- d. "Plea in bar,"

he stands on in this case, and that the other of said documents be stricken from the records of this court until the adjudication on the document on which said defendant may elect to stand.

2. That the document entitled "Plea in abatement" be
77 stricken from the records of this court on the ground that the defendant has filed a demurrer to the indictment herein and thus waived any defect which might be taken advantage of by a plea in abatement.

3. That the document entitled "Plea in abatement" filed herein be stricken from the records on the ground that it is not properly verified as required by law.

4. For such other and further relief in the premises as may be just and proper.

Yours, etc.

Dated New York, Jan. 21, 1915.

H. SNOWDEN MARSHALL,
United States Attorney, Attorney for the Plaintiff.

Office & post-office address: U. S. Court House & Post Office Building, Borough of Manhattan, City of New York.

To Messrs. Kellogg & Rose, attorneys for Defendant Oppenheimer, 115 Broadway, Borough of Manhattan, City of New York.

78 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, PLAINTIFF,	} 7-237.
vs.	
HERMAN H. OPPENHEIMER ET AL., DEFENDANTS.	

Notice of motion.

SIR: Please take notice that upon the annexed affidavit of Samuel Hershenstein, duly verified on January 8, 1915, a motion will be made before the United States District Court, Southern District of New York, in the United States courthouse and post-office building, at the term thereof for the hearing of criminal business, on Wednesday, the 13th day of January, nineteen hundred and fifteen, at 10.30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, to strike from the records of this court certain documents filed herein, entitled as follows: (1) "Demurrer"; (2) "Plea in abatement"; (3) "Motion to quash on behalf of Herman H. Oppenheimer"; (4) "Plea in bar," on the ground that at the time said documents were filed the plea of "not guilty" theretofore entered by the defendant, Herman H. Oppenheimer, was not withdrawn and said plea of "not guilty" still remains of record in this court.

Yours, etc.

Dated New York, January 8th, 1915.

H. SNOWDEN MARSHALL,
*United States Attorney for the Southern District
 of New York, Attorney for the Plaintiff.*

To Kellogg & Rose, attorneys for the Defendant Oppenheimer, 115 Broadway, New York City.

79 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, PLAINTIFF,	} No. 7-237.
vs.	
HERMAN H. OPPENHEIMER ET AL., DEFENDANTS.	

Affidavit.

SOUTHERN DISTRICT OF NEW YORK, } ss:
City and County of New York,

Samuel Hershenstein, being duly sworn, deposes and says that he is an assistant United States attorney for the Southern District of New York; that on December 21st, 1914, the United States grand

jury for the Southern District of New York duly filed in this court an indictment charging the above-named defendant, Herman H. Oppenheimer, and others, with a violation of section 37 of the United States Criminal Code; that on December 22d, 1914, the said defendant, Herman H. Oppenheimer, appeared in court and pleaded to said indictment "not guilty" with leave to withdraw said plea by January 4, 1915, and demur or make any other plea or motion he may be advised on said date;

That on January 4th, 1915, the said Herman H. Oppenheimer did not withdraw said plea of "not guilty," but placed on file in said court four documents entitled as follows: (1) "Demurrer;" (2) "Plea in Abatement;" (3) "Motion to Quash on Behalf of Herman H. Oppenheimer;" (4) "Plea in Bar;" that the plea of "not guilty" still remains upon the records of this court, as well as the 80 other documents above referred to.

SAMUEL HERSHENSTEIN.

Sworn to before me this 8th day of January, 1915.

[SEAL.]

FREDERICK L. CAMPBELL,

Notary Public, Kings County, No. 127.

Certificate filed in New York County, No. 61, New York County. Register's No. 6164, New York County.

Register's No. 6173, Kings County.

My commission expires March 30, 1915.

(Endorsed:) Copy received Jan. 8, 1915. Kellogg & Rose. Filed Jan. 21, 1915.

81

Criminal docket 7-278—Docket entries.

UNITED STATES

vs.

JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM SAMUELS, HERMAN J. DIETZ, CHARLES HEPNER, AND HERMAN H. OPPENHEIMER.

H. Snowden Marshall, U. S. attorney.

Kellogg & Rose, 115 B'way, for Def't Oppenheimer.

Joseph I. Green, 141 B'way.

Conspiracy to conceal assets from trustee in bankruptcy.

Sec. 37, U. S. C. C., and sec. 29-b, bankruptcy act.

1914.

Dec. 21. Filed indictment.

Dec. 22. Def't Herman H. Oppenheimer pleads not guilty. Bail, \$500.

Dec. 22. Filed recognizance of Oppenheimer.

1915.

- Jan. 4. Def't Dietz pleads not guilty. Bail, \$2,500.
 Jan. 4. Filed motion to quash, plea in abatement, plea in bar, and demurrer as to Herman H. Oppenheimer.
 Jan. 6. Filed demurrer and motion to quash, and special plea in bar as to H. J. Dietz.
 Jan. 5. Filed recognizance of Dietz.
 Jan. 20. Def't H. J. Dietz withdraws plea of not guilty.
 Jan. 21. Def't H. H. Oppenheimer withdraws plea of not guilty.
 Jan. 21. Filed notice of motion.
 Jan. 30. Demurrers and motion to quash argued—Judge Pope.
 Jan. 30. Pleas in bar and pleas in abatement withdrawn from the record without prejudice to refile after decision on demurrer.
 Jan. 30. Filed joinder in demurrer.

1916.

- Feb. 2. Filed opinion, Pope, J. Indictment ordered quashed and allowing defendants to go without day thereunder.
 Feb. 14. Filed amended opinion, Pope, J.
 Feb. 26. Filed order granting motion to quash made by defendant Herman H. Oppenheimer. (A. N. Hand, J.)
 Feb. 26. Filed assignment of errors, petition for writ of error.
 Feb. 28. Filed citation and writ of error, U. S. Supreme Court.
 M'ch 9. Stip. as to record.

82

Opinion.

District Court of the United States, Southern District of New York.

UNITED STATES OF AMERICA
 vs.
 JACQUES SAMUELS ET ALS.

Nos. 2461-2462.

R. B. Woods, Esq., of New York City, assistant district attorney for the United States.

Abram J. Rose, Esq., Emanuel Jacobus, Esq., and Benjamin Slade, Esq., all of New York City, for defendants.

THOMAS, *District Judge:*

The defendant and nine others were jointly indicted by the grand jury on February 24th, 1914, charged with a conspiracy to conceal assets from a trustee in bankruptcy in violation of sec. 29b of the Bankruptcy Act and with violating sec. 37 of the United States Criminal Code.

Four of the defendants, Herman H. Oppenheimer, Abraham Samuels, Charles Hepner, and Ray Abrahams, are represented by counsel and pleadings bearing various titles have been filed in their behalf. Each of these four last mentioned defendants in his pleadings asks

that the indictment, so far as it relates to him, be quashed for the reason that the acts alleged in the indictment are barred by the statute of limitations contained in section 29d of the Bankruptcy Act. Said section reads as follows:

"A person shall not be prosecuted for any offense arising under this act unless the indictment is found or the information is filed in court within one year after the commission of the offense."

83 In my opinion the above quoted section is determinative of the issues presented by the indictment against the aforementioned defendants who have, in their pleadings, attacking the indictment, invoked the provision of said section, hence there is no occasion to determine other questions raised by pleadings, some of which are of vital importance and decisive.

As already noted, the indictment was returned February 24th, 1914. The last overt act alleged in the indictment was on November 25th, 1912.

There are no other facts alleged in the indictment which would warrant this court in finding a continuous act of conspiracy from November 25th, 1912, to the date of the indictment, February 24th, 1914.

While it may be inferred from the language of the indictment that the *concealment* continued, no facts are alleged to show the continuance of the conspiracy, if one existed.

In *United States vs. Phillips*, 196 Fed., 574, Judge Hough of this district, after carefully analyzing the cases of *U. S. v. Kissel*, 218 U. S., 601 and *U. S. v. Irwins*, 98 U. S., 450, arrived at this conclusion; that while the concealment may continue the crime of concealment was completed long before.

In the case of *In re Adams*, 171 Fed., 599, it is held that concealment must be from "a trustee." In the case at bar the indictment alleges that the trustee qualified on November 4th, 1912. The last overt act alleged in the indictment was twenty-one days later, to wit, on November 25th, 1912.

84 It is therefore apparent from the language of the indictment that more than one year elapsed after the appointment of the trustee and after the date of the last overt act alleged therein before this indictment was found or filed in court against these defendants.

If the statute of limitation provided for in the bankruptcy act, section 29d is controlling, then these indictments should be dismissed as against the four defendants invoking the protection of that statute.

I find nothing in the language of these indictments that warrants a conclusion other than that the offenses therein described were offenses against the bankruptcy act and as such should be dealt with according to the plain provisions of that act, one of which, section 29d,

is a statute of limitation which effectually bars a prosecution of these defendants invoking its protection. The learned district attorney contended that the limitation contained in section 29d does not apply and claimed that the limitation imposed in sec. 1044 of the Revised Statutes should govern. I can not subscribe to this contention. In the absence of section 29 of the bankruptcy act this court would have no jurisdiction over the alleged crime set forth in the indictment. If Congress intended that section 29d should apply only to the offenses specifically enumerated in the entire section appropriate language, in my opinion, would have been adopted. For example, if subdivision 29d read "a person shall not be prosecuted for any of the foregoing offenses," etc., then the Government's claim would have some force, but the subdivision in question reads in part "for any offense arising under this act." The alleged offense recited in the indictments necessarily arose out of the bankruptcy act and not under some other law of the United States, hence the limitation found in section 29d applies.

85 I therefore find that no lawful indictments were found against Herman H. Oppenheimer, Abraham Samuels, Charles Hepner, and Ray Abrahams, or either of them within one year after the offenses alleged in the indictments, and that their prosecution is barred by section 29d of the bankruptcy act. These indictments are therefore dismissed as to each and all of them.

Let an order to that effect be entered.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 1, 1914.

86

Opinion.

In the United States District Court for the Southern District of New York.

THE UNITED STATES OF AMERICA, PLAINTIFF,

v.

JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM SAMUELS, HERMAN J. DIETZ, CHARLES HEPNER, AND HERMAN H. OPPENHEIMER, DEFENDANTS.

No. 7-278.

Opinion.

The demurrer and the motion to quash filed by the several defendants proceed upon a number of grounds. All of these have been carefully examined.

The attack upon the regularity of the proceedings before the grand jury is found not to be well taken. Even if lack of evidence before a grand jury to justify the finding of an indictment constitutes grounds for quashing it, the showing in support of the motion to quash is inadequate to show a lack or such evidence. None of the other grounds

connected with the hearing before the grand jury are, in the light of well-settled principles, sufficient to sustain the motion to quash.

Other features of the attack upon the indictment go to portions thereof rather than the entire instrument, and for that reason can not be considered.

The only ground which impresses the court as serious as against the validity of the present indictment arises out of the following state of facts:

An indictment was found against these same defendants on February 24, 1914, which, in legal effect, is identical with the indictment here under consideration. This latter statement is made advisedly notwithstanding the fact that the present indictment, found December 21, 1914, contains an alleged overt act in addition to those set forth in the indictment of February 24th. In other respects the indictments are practically identical. An examination of the additional overt act alleged in the last indictment leads to the view that, notwithstanding certain conclusions of law therein set forth, the matters therein stated cannot, from their nature, constitute an overt act under the conspiracy alleged in each of the indictments. It follows, therefore, as stated above, that the two indictments are legally identical.

With this as a premise, the disposition made of the first indictment is material. The sufficiency of that was before Judge Thomas upon a motion to quash, and was decided by him on October 1, 1914. His decision (which of course was in advance of any submission to or swearing of a jury) quashed the indictment and discharged the defendants thereunder. This decision proceeded upon the ground that the prosecution was barred by the statute of limitations. No appeal was taken by the government from this decision, and thus from October 1, 1914, when the decision was rendered, until December 21, 1914, when this indictment was found, there was nothing pending against these defendants. Should the prosecution under this last indictment be allowed to proceed when there is outstanding a judgment in favor of the defendants to the effect that the statute of limitations has run against their alleged offense? The Government urges that this may be done, and further sets forth to the court the fact that since the decision of Judge Thomas a decision of the Circuit Court of Appeals for this Circuit, as well as a decision by the Supreme Court of the United States, has shown that the statute of limitations did not run until three years after the offense instead of one year as held by him, and that his decision was thus erroneous. This latter, however, does not impress me as being of relevancy, provided the defendants have heretofore been heard upon this issue, have been discharged thereunder, and that judgment being unappealed from remains in force and effect. The decision of Judge Thomas in

my judgment became the law of the case, and, until reversed, protected the defendants from further prosecution arising upon the same state of facts. While, of course, were the case open to decision upon the question of limitation, the decision of the appellate courts would control, yet the law of the case having been settled previous to these decisions, the defendants should not be subjected to another prosecution while the judgment quashing the indictment and discharging them still remains in force and effect. To hold otherwise is to subject the citizen to a series of prosecutions when the law contemplates that once having a decision in his favor he should, until such decision is reversed, be allowed to go unmolested by another proceeding on the same charge.

An order will accordingly be entered quashing the indictment of December 21, 1914, and allowing the defendants to go without day thereunder.

This January 29, 1916.

WM. H. POPE,

U. S. District Judge.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Feb. 14, 1916.

89 *Order quashing indictment.*

United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, PLAINTIFF,
against

JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM SAMUELS, Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer, defendants.

No. 7-278.

A motion to quash the indictment herein having been filed by the defendant, Herman H. Oppenheimer, and having duly come on to be heard before the Honorable William H. Pope, district judge, on the 29th day of January, 1915;

Now, after reading the decision and opinion of Honorable William H. Pope, United States district judge, dated January 29th, 1916, and filed in the office of the clerk of the District Court of the United States for the Southern District of New York, on February 2d, 1916, and the amended opinion of said judge, it is

Ordered and adjudged, that the motion to quash made by the defendant, Herman H. Oppenheimer, be granted, and the indictment is hereby quashed and the defendants allowed to go without day thereunder.

Dated New York, February 26th, 1916.

AUGUSTUS N. HAND,

U. S. D. J.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Feb. 26, 1916.

90 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA

vs.

HERMAN H. OPPENHEIMER ET AL.

Assignment of errors.

The United States of America, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers occurred in the decision of the court herein sustaining defendant's motion to quash the indictment herein:

I. The court erred in holding that the action of the court in quashing the former indictments Nos. 2461 and 2462 were a bar to a reindictment and prosecution upon a similar charge, although the defendant had not been put in jeopardy under said former indictments.

II. The court erred in describing its action as the granting of a motion to quash the indictment.

III. The court erred in not describing its action as the sustaining of a special plea in bar.

IV. The court erred in holding as a matter of law that the last overt act in the indictment herein could not from its nature and did not legally constitute an overt act under the conspiracy alleged in the indictment.

91 V. The court erred in not holding as a matter of law that the last overt act in the indictment herein did constitute an overt act under the conspiracy alleged in the indictment.

VI. The court erred in holding as a matter of law that the indictment herein is legally identical with the indictments returned, Nos. 2461 and 2462, which were dismissed by Judge Edwin F. Thomas, copies of which indictments and opinion are annexed hereto.

VII. The court erred in sustaining the motion to quash the indictment.

VIII. The court erred in not denying the motion to quash the indictment herein.

Wherefore the United States of America prays that the judgment of the said District Court of the United States for the Southern District of New York be, under the act of Congress approved March 2nd, 1907, reviewed by the Supreme Court of the United States and said judgment be reversed.

H. SNOWDEN MARSHALL,
*United States Attorney for the
Southern District of New York.*

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Feb. 26, 1916.

By the honorable Augustus N. Hand, one of the justices of the District Court of the United States for the Southern District of New York, in the Second Circuit, to Herman H. Oppenheimer, et al., greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court to be holden in the city of Washington, in the District of Columbia, on the 26th day of March, 1916, pursuant to a writ of error filed in the clerk's office of the United States District Court for the Southern District of New York, wherein the United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error as in the said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the city of New York, in the district and circuit above named, this 26th day of February, in the year of our Lord one thousand nine hundred and sixteen, and of the Independence of the United States the one hundred and fortieth.

AUGUSTUS N. HAND,

Judge of the district court of the United States for the Southern District of New York, in the Second Circuit.

93 (Indorsed.) C 7—278. U. S. District Court, Southern District of New York, United States of America *versus* Herman H. Oppenheimer, et al. Citation. H. Snowden Marshall, United States attorney, attorney for U. S. Service of a copy of the within is hereby admitted. New York, Feb. 28, 1916. Kellogg & Rose, attorney for defendants. To Messrs. Kellogg & Rose, attorney for defendants, 115 Broadway, New York, N. Y.

94 Supreme Court of the United States.

UNITED STATES, PLAINTIFF IN ERROR,	} No. 899.
vs.	
HERMAN H. OPPENHEIMER ET AL.	

Stipulation.

It is hereby stipulated by counsel for the respective parties in the above entitled and numbered cause, that the number 7-237, wherever it occurs on pages 14, 16, and 21, of the "Extracts from Transcript of Record," shall be changed before submission to read 7-278, which

is the correct number of the case in the United States District Court for the Southern District of New York.

JNO. W. DAVIS,
H

Solicitor General.

L. LAFLIN KELLOGG,
ABRAM J. ROSE,
HALL,

Attorneys for Herman H. Oppenheimer, Defendant in Error.

April 17, 1916.

97 In the Supreme Court of the United States, October Term, 1915.

(Indorsed:) File No. 25182. Supreme Court U. S. October term, 1915. Term No. 899. The United States, Pl'ff in Error, vs. Herman H. Oppenheimer et al. Stipulation to correct record. Filed April 17, 1916.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
v.

HERMAN H. OPPENHEIMER ET AL.

No. 899.

Stipulation.

It is hereby stipulated by counsel for the parties to the above entitled cause that the transcript of the record herein may be enlarged by adding thereto the annexed pleadings, which are true and correct copies of the originals filed in this cause in the United States District Court for the Southern District of New York:

(1) Plea in abatement, filed January 4, 1915, withdrawn January 30, 1915;

(2) Plea in bar which was filed January 4, 1915, and withdrawn January 30, 1915;

(3) Joinder in demurrer to indictment filed by the United States, January 30, 1915.

JNO. W. DAVIS,

Solicitor General.

ABRAM J. ROSE,

L. LAFLIN KELLOGG,

Attorneys for Defendant in Error.

98 United States District Court, southern district of New York.

THE UNITED STATES OF AMERICA

against

JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM
SAMUELS, HERMAN J. DIETZ, CHARLES HEPNER
AND HERMAN H. OPPENHEIMER.

No. 7-237.

Plea in abatement.

And now comes the defendant, Herman H. Oppenheimer, and moves this court to set aside the indictment filed in this case for the following reasons:

1. It appears from the records of this court that the indictment herein is barred by reason of the adjudication in re United States against the same parties who are defendants in this indictment, numbers 2461 and 2462. This indictment sets forth and is based on the same conspiracy as the last indictment, which last indictment is hereby made a part of this plea together with the opinion and order thereon now on file in this court.

2. And the said Herman H. Oppenheimer, in his proper person comes this 4th day of January, 1915, and, having read the said indictment and protesting that he is not guilty of the premises charged in said indictment, for plea, nevertheless, says that the United States of America ought not further to prosecute the said indictment against him because he says that at divers times during the sessions of the grand jury (during the month of December, 1914, and up to and including the 21st day of December, 1914), by which the said indictment was found and returned into this court, and whilst the said grand jury was engaged in the investigation of the transactions, matters and things charged and set forth in said indictment, during said time, and during the examination of witnesses and the introduction and taking of oral testimony and documentary evidence concerning the same, and during the deliberations and vote thereon, the said grand jury which voted the said indictment was improperly constituted and the members thereof were not proper persons to pass on the said indictment, at least one of them being interested in the subject matter thereof, as a creditor of one of the corporations owned by the bankrupts, to wit, the Borough Apartment Realty Co., and the said juror was present while the witnesses were being heard, and, as defendant believes, during the deliberations and voted upon the said indictment, which fact was known to all of the said grand jurors who voted on the said indictment, in contravention to the statutes of the United States now in force in reference to qualifications of grand jurors and to the self-evident injury and harm of the defendant, Oppenheimer.

4. That the grand jury, when it voted this indictment had no evidence before it showing the commission of the crime and the overt acts charged in the said indictment, against said defendant, Oppenheimer, and did not have competent legal evidence as to either or both and the same more fully appears by the records of the said grand jury and more particularly from the facts that the said indictment alleges that the defendant, Oppenheimer, gave certain false and willful testimony on January 19th, 1914, and there was no legal or competent evidence before the said grand jury that he had so testified, and there never was such testimony given by said defendant, Oppenheimer.

100 5. That the grand jury, when it voted this indictment, had no evidence before it showing the commission of the crime and the overt acts charged in the said indictment against said defendant, Oppenheimer, and did not have competent legal evidence as to either or both, and the same more fully appears by the records of the said grand jury and more particularly from the facts that the said indictment charges the defendant, Oppenheimer, with having received payment of a note given to him by the bankrupt during September, 1912. There was no competent legal evidence before the said grand jury of the said fact.

6. That the grand jury, when it voted this indictment, had no evidence before it showing the commission of the crime and the overt acts charged in the said indictment against the defendant, Oppenheimer, and did not have competent legal evidence as to either or both, and the same more fully appears by the records of the said grand jury, and more particularly from the facts, that the said indictment charges that the defendant, Oppenheimer, conspired with various persons, and there was no competent legal evidence before the grand jury of the creation or existence of the said conspiracy.

Wherefore the said Herman H. Oppenheimer prays judgment of the said indictment whether the United States of America ought or can prosecute him in the premises, and that this indictment be quashed or dismissed and that he may be discharged thereof without

101 delay, and the information contained herein has just been obtained by the defendant only since the indictment, and this plea has not been filed earlier for the sole reason that on the date the indictment was found the time to file pleas other than that of not guilty was fixed by the court to be the date this plea is filed.

New York, January 4th, 1915.

KELLOGG & ROSE,
Attorneys for defendant, Oppenheimer,
O. & P. O. Address, 115 Broadway, Manhattan, New York City.

ABRAM J. ROSE, Esq.,
Of counsel.

BENJAMIN SLADE, Esq.,
Of counsel.

We hereby certify that the above plea is not interposed for delay but should be sustained on the merits.

Dated New York, January 4, 1915.

KELLOGG & ROSE,
Attorneys for defendant, Oppenheimer.

102 UNITED STATES OF AMERICA,
Southern district of New York,
State, city, and county of New York. } *ss.*

Herman H. Oppenheimer, being duly sworn, deposes and says: That he is one of the defendants in the within action. That he has read the foregoing plea in abatement and knows the contents thereof.

That the facts herein alleged are obtained from the various sources and personal observation and deponent believes them to be true.

This plea is not made for the purpose of delay.

HERMAN H. OPPENHEIMER.

Sworn to before me this 4th day of January, 1915.

J. CARER BECHER,
Com. of Deeds, N. Y. C.

103 (Indorsed:) United States District Court, Southern District of New York. United States of America v. Jaques Samuels, Herman H. Oppenheimer, et al., defendants. Plea in abatement. Kellogg & Rose, attorneys for Deft. Oppenheimer, 115 Broadway, Borough of Manhattan, New York City. U. S. District Court. Filed Jan. 4, 1915, S. D. of N. Y. Copy received Jan. 4, 1915. U. S. Attorney's Office, H. Snowden Marshall.

104 United States District Court, Southern District of New York.

THE UNITED STATES OF AMERICA,
against
JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM SAMUELS, HERMAN J. DIETZ, CHARLES HEPNER AND
HERMAN H. OPPENHEIMER. } No. 7-237.

Plea in bar.

Now comes into court the defendant, Herman H. Oppenheimer, in his own proper person and by counsel, and having read the indictment against him, says that he is not guilty in manner and form as charged therein, and for his trial puts himself upon the country, and this defendant also says that the United States ought not further to prosecute the said indictment against him because of the following matters and things which he pleads in bar on this prosecution for any and all

of the alleged defenses therein charged, and respectfully avers and says, as follows:

1. It appears from the records of this court that the indictment herein is barred by reason of the adjudication by this court on the indictments in this court, in re United States against the same parties who are defendants in this indictment, which indictments were numbered 2461 and 2462.

2. The indictment is barred by the statute of limitations contained in section 29-d of the Bankruptcy Law of 1898.

3. The indictment does not charge an offense cognizable by this court or covered by the statutes of the United States of America.

105 4. That the grand jury, when it voted this indictment, had no evidence before it showing the commission of the crime and the overt acts charged in the said indictment against said defendant, Oppenheimer, and did not have competent legal evidence as to either or both, and the same more fully appears by the records of the said grand jury and more particularly from the facts that the said indictment alleges that the defendant, Oppenheimer, gave certain false and fraudulent testimony on January 19th, 1914, and there was no legal or competent evidence before the said grand jury that he had so testified, and there never was such testimony given by said defendant, Oppenheimer.

5. That the grand jury, when it voted this indictment, had no evidence before it showing the commission of the crime and the overt acts charged in the said indictment against said defendant, Oppenheimer, and did not have competent legal evidence as to either or both, and the same more fully appears by the records of the said grand jury and more particularly from the facts that the said indictment charges the defendant, Oppenheimer, with having received payment of a note given to him by the bankrupt during September, 1912. There was no competent legal evidence before the said grand jury of the said fact.

6. That the grand jury, when it voted this indictment had no evidence before it showing the commission of the crime and the overt acts charged in the said indictment against the said defendant, Oppenheimer, and did not have competent legal evidence as to either or both, and the same more fully appears by the records of the said grand jury and more particularly from the facts that the said indictment charges that the defendant, Oppenheimer, conspired with
106 various persons and there was no competent legal evidence before the grand jury of the creation or existence of the said conspiracy.

Wherefore the said Herman H. Oppenheimer, prays judgment of the said indictment whether the United States of America ought or

can prosecute him in the premises and that he may be discharged thereof without delay, and the indictment quashed.

New York, January 4th, 1915.

KELLOGG & ROSE,
Attorneys for Defendant, Oppenheimer,
Office and P. O. Address, 115 Broadway,
Manhattan, New York City.
ABRAM J. ROSE, Esq.,
Of Counsel.
BENJAMIN SLADE, Esq.,
Of Counsel.

We hereby certify that the above plea is not interposed for delay, but should be sustained on the merits.

New York, January 4th, 1915.

KELLOGG & ROSE,
Attorneys for Defendant, Oppenheimer.

107	UNITED STATES OF AMERICA, Southern district of New York, State, city, and county of New York.	}	ss:
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Herman H. Oppenheimer, being duly sworn, deposes and says: That he is one of the defendants in the within action. That he has read the foregoing plea in bar and knows the facts thereof. That the facts therein alleged are obtained from various sources and personal observations. Deponent believes them to be true.

That this plea is not interposed for the purpose of delay.

HERMAN H. OPPENHEIMER.

Sworn to before me this 4th day of January, 1915.

J. CARL BECHER,
Com. of Deeds,
N. Y. City.

108 (Indorsed:) United States District Court, Southern District of New York, United States of America, against Jacques Samuels, Herman H. Oppenheimer, et al., defendants. (Copy.) Plea in bar. Kellogg & Rose, attorneys for Defendant Oppenheimer, 115 Broadway, borough of Manhattan, New York City. Copy received Jan. 4, 1915. H. Snowden Marshall, U. S. Attorney's Office.

109 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, PLAINTIFF,
 vs.
 HERMAN H. OPPENHEIMER, DEFENDANT. }

Joinder in demurrer to indictment.

And the said H. Snowden Marshall, who prosecutes for the said United States in this behalf, says that the said indictment and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law to compel the said Herman H. Oppenheimer to answer the same; and this the said H. Snowden Marshall, who prosecutes as aforesaid, is ready to verify and approve the same as the court here shall direct and award.

Wherefore, inasmuch as the said Herman H. Oppenheimer has not answered to the said indictment or hitherto in any manner denied the same, the said H. Snowden Marshall for the said United States prays judgment that the said Herman H. Oppenheimer may answer over to the said indictment.

H. SNOWDEN MARSHALL,

United States Attorney.

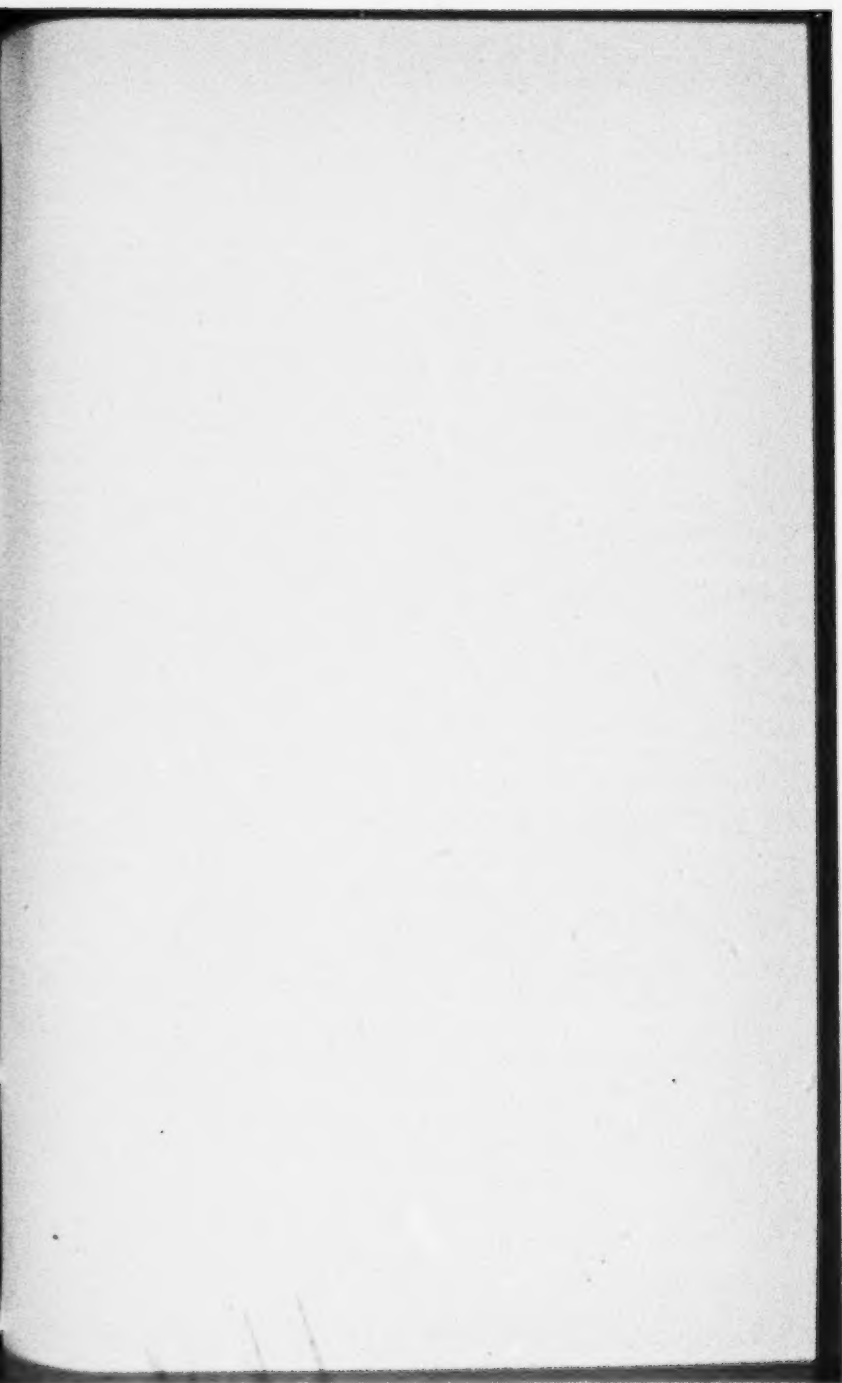
110 (Indorsed:) U. S. District Court, Southern District of New York. United States of America, plaintiff, versus Herman H. Oppenheimer, defendant. Joinder in demurrer to indictment.

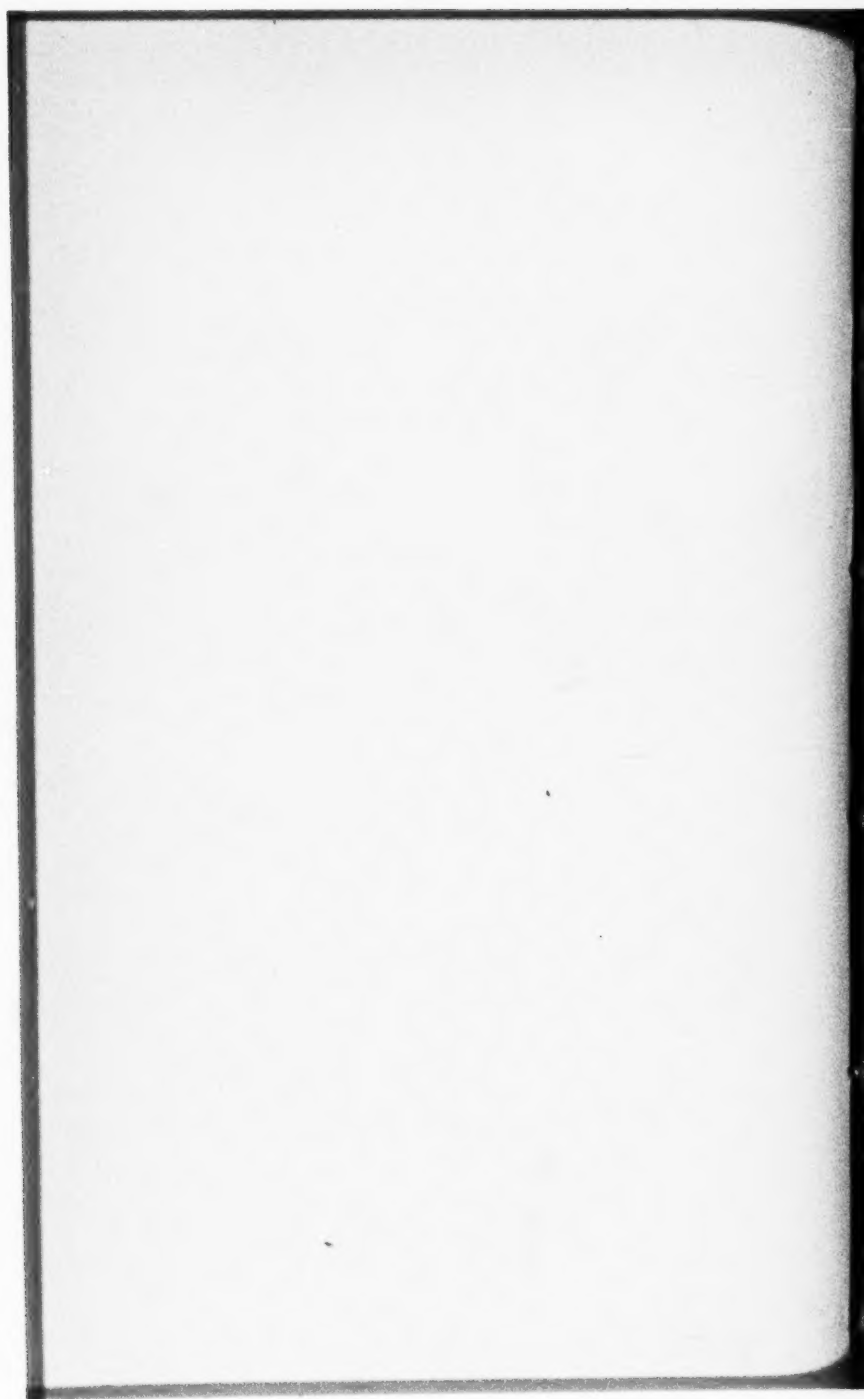
H. Snowden Marshall, United States Attorney, attorney for pltf.

111 (Indorsed:) No. 899. Supreme Court of the United States. October term, 1915. United States of America, plaintiff in error, v. Herman H. Oppenheimer, et al., defendant in error. Stipulation for enlarged record. Office of the Clerk Supreme Court U. S. Received Apr. 21, 1916.

112 (Indorsed:) File No. 25,182. Supreme Court U. S. October term, 1915. Term No. 899. The United States, pl'ff in error, vs. Herman H. Oppenheimer et al. Stipulation of counsel and addition to record. Filed April 21, 1916.

(Indorsement on cover:) File No. 25,182. S. New York. D. C. U. S. Term No. 899. The United States, plaintiff in error, vs. Herman H. Oppenheimer, et al. Filed March 15th, 1916. File No. 25,182.





STANDARD FORM NO. 64

THE OFFICE OF THE SECRETARY OF THE ARMY

WASHINGTON, D. C.

IN ORDER TO OBTAIN THIS FORM, WRITE TO THE
DIRECTOR, OFFICE OF THE SECRETARY OF THE ARMY

FORM NO. 64

(25,100)

(25,182)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 899.

THE UNITED STATES, PLAINTIFF IN ERROR,

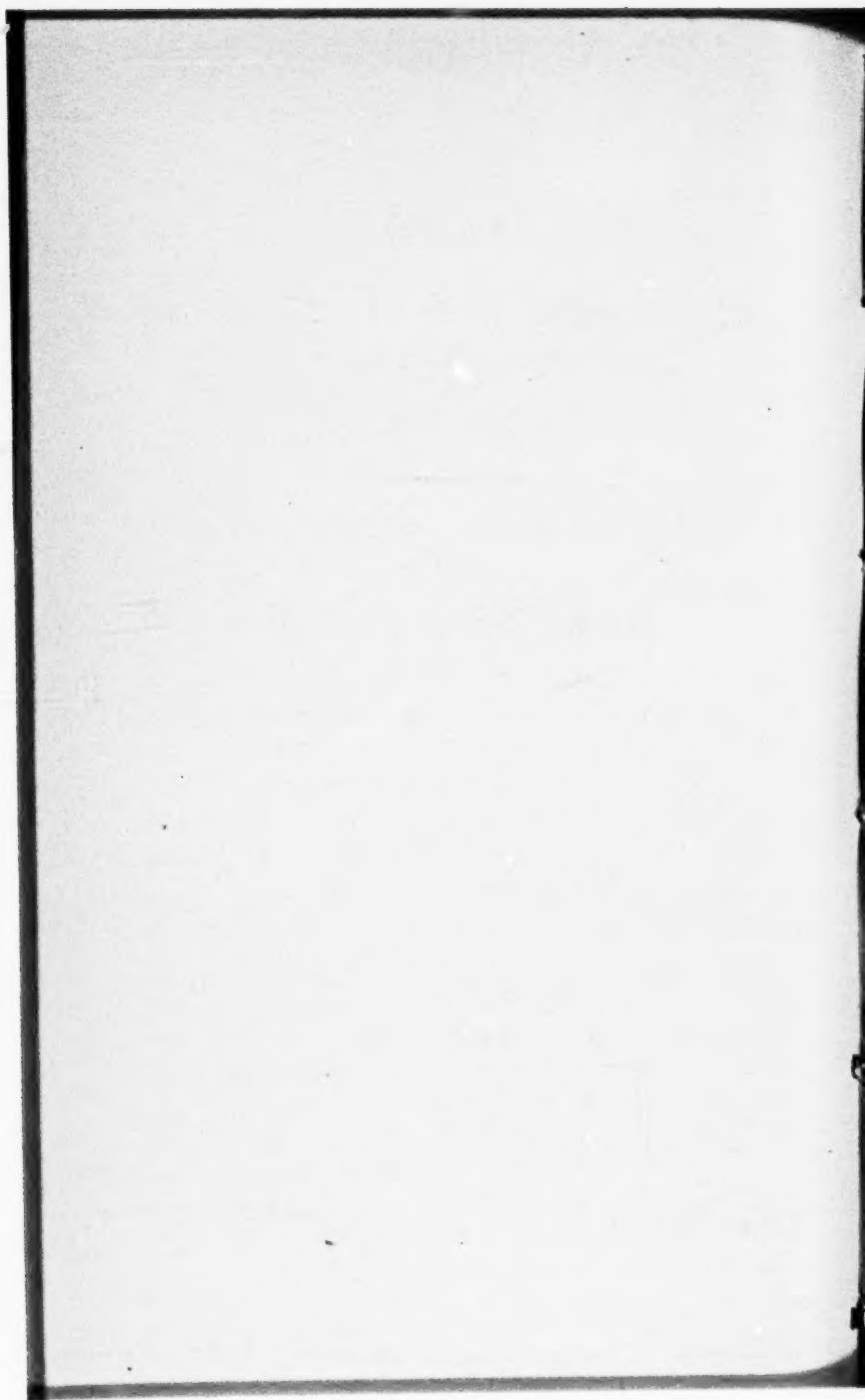
vs.

HERMAN H. OPPENHEIMER ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

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1 THE UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said District Court of the United States for the Southern District of New York, in the Second Circuit, before you or some of you, between the United States of America and Herman H. Oppenheimer, et al., a manifest error hath happened to the great damage of the said United States of America, as by its complaint appears:

We being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within

30 days of the date hereof; that the record and proceedings aforesaid being accepted, the said Supreme Court may cause further to be done therein to correct that error, what by right and according to the laws and customs of the United States should be done.

2 Witness, The Honorable Edward D. White, Chief Justice of the United States, the 26th day of February in the year of our Lord one thousand nine hundred and sixteen.

ALEX. GILCHRIST, JR.,
Clerk U. S. District Court for the
Southern District of New York.

The foregoing writ is hereby allowed.

AUGUSTUS N. HAND,
United States District Judge for the
Southern District of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America, for the Southern District of New York, in the Second Circuit, by virtue of the foregoing Writ of Error, and in obedience thereto, do hereby certify, that the following pages numbered from four to ninety-three inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the cause of United States of America, Plaintiff in Error, against Herman H. Oppenheimer, et al., Defendants in Error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 11th day of March, in the year of our Lord one thousand nine hundred and sixteen, and of the Independence of the United States the one hundred and fortieth.

[Seal District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR., Clerk.

3 [Endorsed:] C. 7-278. 7/278. U. S. District Court, Southern District of New York. United States of America versus Herman H. Oppenheimer et al. Writ of Error. H. Snowden Marshall, United States Attorney, Attorney for U. S. Service of a copy of the within is hereby admitted. New York, Feb. 28, 1916. Kellogg & Rose, Attorneys for def'ts to Messrs. Kellogg & Rose, Attorney- for def'ts, 115 Broadway, New York, N. Y. U. S. District Court, S. D. of N. Y. -Filed Feb. 28, 1916.

4-13

Petition for Writ of Error.

United States District Court, Southern District of New York.

UNITED STATES OF AMERICA

vs.

HERMAN H. OPPENHEIMER et al.

Now comes the United States of America, by its attorney, H. Snowden Marshall, and complains that in the record and proceedings had in this cause, and in the order and judgment sustaining defendant's motion to quash the indictment herein, and dismissing said indictment, which judgment was duly made and filed in the office of the Clerk of the United States District Court for the Southern District of New York, on February 2, 1916, and the amended judgment which was filed on February 14, 1916, and which order was duly made and filed in the office of the said Clerk of the District Court for the Southern District of New York, on the 26th day of February, 1916, a manifest error has happened as will appear in the assignment of errors herewith submitted.

Wherefore, The United States of America prays for the allowance of a writ of error, and for such other orders and process as may cause the same to be corrected by the Supreme Court of the United States.

Dated: New York, February 26th, 1916.

H. SNOWDEN MARSHALL,

U. S. Attorney.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Feb. 26, 1916.

14

2462-6-334.

Indictment.

District Court of the United States of America for the Southern District of New York.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, Begun and Held in the City of New York, within and for the District Aforesaid, on the First Tuesday of February in the Year of Our Lord One Thousand Nine Hundred and Fourteen, and Continued by Adjournment to and Including the 24th day of February, in the Year of Our Lord One Thousand Nine Hundred and Fourteen.

SOUTHERN DISTRICT OF NEW YORK, ss:

The Grand Jurors of the United States of America, within and for the District aforesaid, on their oath present that during the year nineteen hundred and twelve, and up to and including the fifth day of August, nineteen hundred and twelve, Jacques Samuels and Joseph

Samuels, late of the City and County of New York, were engaged in business at No. 129 West 20th Street, in the City, County and State of New York as copartners, doing business under the firm name of Joseph Samuels & Co., as manufacturers and dealers in braids and embroideries, and kindred merchandise; that Jacques Samuels was and is a resident of the City and County of New York; that Joseph Samuels was, and is a resident of the City and County of New York; that Abraham Samuels was and is a resident of the City and County of New York; that Reuben Samuels was and is a resident of the City and County of New York and that Ray Abrahams was and is a resident of the City and County of New York; that Herman J. Dietz

was and is a resident of the City and County of New York;
15 that Isaac Anderson was and is a resident of the City and County of New York; that Charles Hepner was and is a resident of the City and County of New York; that Herman H. Oppenheimer was and is an attorney at law in the City of New York, with offices at 170 Broadway, City and County of New York; that on the fifteenth day of June, nineteen hundred and twelve, and continuously on all other days thereafter to and including the 24th day of February, in the year of our Lord one thousand nine hundred and fourteen, in the County of New York, Southern District of New York, and within the jurisdiction of this Court and under the circumstances aforesaid, the said Jacques Samuels and Joseph Samuels, copartners doing business as aforesaid, under the firm name of Joseph Samuels & Company, as aforesaid, and the said Abraham Samuels, Reuben Samuels, Ray Abrahams, Herman J. Dietz, Isaac Anderson, Charles Hepner and Herman H. Oppenheimer then and there anticipated, contemplated and planned that a petition in bankruptcy should thereafter be filed to have the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as a copartnership, adjudicated bankrupts under the bankruptcy laws of the United States; that thereafter, in the due course of the bankruptcy proceedings, a trustee for the estate in bankruptcy of the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as a copartnership, should be duly appointed.

And the grand jurors aforesaid, on their oath aforesaid, do further present that on the fifth day of August, nineteen hundred and twelve, a petition in bankruptcy was duly filed in the United States District Court for the Southern District of New York to have the said Jacques

Samuels and Joseph Samuels, doing business as aforesaid
16 under the firm name of Joseph Samuels & Co., individually and as copartners, adjudicated bankrupts; that on the 5th day of August, nineteen hundred and twelve, Alexander S. Webb was duly appointed receiver of the assets and effects of the said copartnership of the said Jacques Samuels and Joseph Samuels, copartners doing business as aforesaid, and of the individual estates of said Jacques Samuels and Joseph Samuels, and on the sixth day of August, 1912, the said Alexander S. Webb duly qualified as such; that on the 23rd day of October the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co.,

individually and as copartners, were adjudicated bankrupts by the said United States District Court; that on the fourth day of November, nineteen hundred and twelve, Alexander S. Webb was duly appointed trustee of the assets and effects of the estate in bankruptcy of the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., and of their individual estates, and the said Alexander S. Webb, on the thirteenth day of November, nineteen hundred and twelve, duly qualified as such.

And the grand jurors aforesaid, on their oath aforesaid, do further present that the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Reuben Samuels, Ray Abrahams, Herman J. Dietz, Isaac Anderson, Charles Hepner and Herman H. Oppenheimer, on the 15th day of June, 1912, and continuously on all other days thereafter to and including the 24th day of February, nineteen hundred and fourteen, in the County of New York, Southern District of New York, and within the jurisdiction of this Court and under the circumstances aforesaid, did willfully, knowingly and unlawfully conspire together to commit an offense against the United States, that is

17 to say, the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Reuben Samuels, Ray Abrahams, Herman J. Dietz, Isaac Anderson, Charles Hepner and Herman H. Oppenheimer, did willfully, knowingly and unlawfully conspire and corruptly and fraudulently agree among themselves that they would knowingly and fraudulently, while the said Jacques Samuels and Joseph Samuels, individually and as copartners doing business as aforesaid under the firm name of Joseph Samuels & Co. should be bankrupts as aforesaid, conceal from said Alexander S. Webb, the trustee of the said estates in bankruptcy, certain properties and moneys, which would, in the due course of the administration of said estates in bankruptcy, belong to the said estates in bankruptcy, to wit, certain moneys which had theretofore been on deposit in banking institutions in the City of New York, to the credit of said Jacques Samuels and Joseph Samuels and of said copartnership Joseph Samuels & Co., to an amount upwards of one thousand dollars (\$1,000.00), and property consisting of certain shares of stock of the Borough Apartment Company, a corporation existing and organized under the laws of the State of New York, which said certificates of stock had been issued by the said Borough Apartment Co., in the name of the said Jacques Samuels and said Joseph Samuels and were the property of said copartnership of Joseph Samuels & Company, the value of said certificates of stock being upwards of the sum of one thousand dollars (\$1,000.00), and other property, the kind, amount and particular description of which, and the exact amount and value of which, is now to the grand jurors unknown.

And in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels and Abraham Samuels did on or about June 28th, nineteen hundred and twelve, in the County of New York, Southern District of New York, make and cause to be made,
18 false and fictitious entries in a certain book called "time-book" belonging and appertaining to the business of Joseph Samuels

& Co., whereby it was made to appear that one William Erlich was employed by said copartnership on January 6, nineteen hundred and twelve and continuously thereafter until May 6th, 1912, and had received from said copartnership for said services the sum of forty dollars (\$40.00) a week on January 6th, 1912, and continuously weekly thereafter up to and including May 6th, 1912, whereas, in truth and in fact, the said William Erlich was not employed by said copartnership until May 6th, 1912, and did not receive from said copartnership any sum or sums of money for services prior to said May 6th, 1912.

And further in pursuance of and to effect the object of said conspiracy, said Jacques Samuels and said Joseph Samuels did, on or about June 20th, 1912, destroy a certain book of account belonging and appertaining to the business of said copartnership of Joseph Samuels & Co., called purchase ledger, and certain other books of account, the number and more particular description of which are now to the grand jurors unknown.

And further in pursuance of and to effect the object of said conspiracy, the said Reuben Samuels did, on June 24th, 1912, receive from said copartnership, Joseph Samuels & Co., the sum of twenty four hundred dollars (\$2,400.00), which said money was the property of the said copartnership of Joseph Samuels & Co., and which moneys would, in due course of the administration of said estate in bankruptcy, belong to said estate in bankruptcy of said copartnership.

And further in pursuance of and to effect the object of said conspiracy, the said Ray Abrahams did on or about November 25th, 1912, receive from said Jacques Samuels a large sum of money, an amount in excess of one thousand dollars (\$1,000.00), the exact amount of which is now to the grand jurors unknown, the property of said copartnership of Joseph Samuels & Co., and which
19 would, in the due course of the administration of said estates in bankruptcy, become the property of the said estate in bankruptcy of the said copartnership of Joseph Samuels & Co., and did thereafter conceal the said moneys from said Alexander S. Webb, the trustee of the estate in bankruptcy of the said copartnership.

And further in pursuance of and to effect the object of said conspiracy, the said Herman J. Dietz did, on or about June 28th, 1912, sign and deliver to said Jacques Samuels a certain promissory note, for the sum of forty-five hundred dollars (\$4500.00), which said note was marked "Non Negotiable," and was in words and figures as follows:

\$4,500.00/100.

NEW YORK, May 16, 1912.

Four months after date, I promise to pay to Joseph Samuels & Co. Forty Five Hundred 00/100 Dollars, at The Columbia Bank, 407 B'way, N. Y.

Value received.

Non negotiable.

H. J. DIETZ.

No. — Due Sept. 16.

And further in pursuance of and to effect the object of said conspiracy, the said Isaac Anderson did, on June 17th, 1912, write his endorsement upon the back of a certain check drawn by said Jacques Samuels in the name of Joseph Samuels & Co., upon the Second National Bank of the City of New York, to the order of "I. Anderson" in the amount of three thousand dollars (\$3,000.00), which said check and said endorsement on the back of said check are as follows:

20

Face of Check.

No. 17.

Joseph Samuels & Co.
Braid and Embroideries.

NEW YORK, June 17, 1912.

Pay to the order of I. Anderson \$3,000.00/100 Three thousand 00/100 Dollars.

To the Second National Bank of the City of New York.

JOS. SAMUELS & CO.

Back of Check.

* * * * *

Endorsements: I. Anderson, Jos. Samuels & Co., Harry Siegel.

And further in pursuance of and to effect the object of said conspiracy, the said Charles Hepner did, on July 25th, 1912, write his endorsement upon the back of a certain check drawn by the said Jacques Samuels in the name of Joseph Samuels & Co., upon the Pacific Bank in the City of New York, to the order of Charles Hepner in the amount of \$405.40, which said check and the endorsement upon the back of said check are as follows:

Face of Check.

No. 160.

NEW YORK, July 25, 1912.

The Pacific Bank,
Madison Avenue Branch, 28th St.

Pay to the order of Charles Hepner Four hundred & five 40/100 Dollars.

\$405.40/100.

JOS. SAMUELS & CO.

Back of Check: Jos. Samuels & Co. Charles Hepner.

21

And further, in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels did, on July 22nd, 1912, take from the funds of said copartnership of Joseph Samuels & Co., the sum of \$1100.00, which said sum of money would, in

the due course of the administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said copartnership, and did conceal and secrete the said sum of \$1100.00 from said Alexander S. Webb, the trustee of said estate in bankruptcy.

And further, in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels did, on July 26th, 1912, take from the funds of said copartnership of Joseph Samuels & Co. the sum of \$2500.00, which said sum of money would, in the due administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said copartnership, and did conceal and secrete the said sum of \$2500.00 from said Alexander S. Webb, the trustee of said estate in bankruptcy.

And further, in pursuance of and to effect the object of said conspiracy, the said Herman H. Oppenheimer, on July 29th, 1912, received the sum of one thousand dollars (\$1,000.00) from the said copartnership of Joseph Samuels & Company; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided.

H. SNOWDEN MARSHALL,
United States Attorney.

22-25 (Endorsed:) 2462. 6-334. U. S. District Court. The United States of America vs. Jacques Samuels and Joseph Samuels, doing business under the firm name of Samuels & Co., Abraham Samuels, Reuben Samuels, Ray Abrahams, Herman J. Dietz, Charles Hepner and Herman H. Oppenheimer and Isaac Anderson.—Indictment. Conspiracy to conceal assets from trustee in bankruptcy—Sec. 29b Bankruptcy Act, 37, U. S. C. X. H. Snowden Marshall, U. S. Attorney.—A True Bill Henry Lewis, Foreman.—U. S. District Court, S. D. of N. Y., Filed Feb. 24, 1914.

Feb'y 25th, '14. H. H. Oppenheimer arraigned and pleads not guilty—leave to withdraw by Mch. 20/14. Bail \$2500.00.

Reuben Samuels arraigned and pleads n. g. Time to withdraw as above.

Ray Abrahams, same entry as above.

Jacques Samuels, Same entry as above.

Joseph Samuels, Same entry as above.

Abraham Samuels, Same entry as above.

Chas. Hepner, Same entry as above.

Bail previously given to stand.

Feb. 26, H. J. Dietz pleads not guilty.

Feb. 27, Isaac Anderson pleads not guilty.

May 1, 1914, Filed motion to quash.

Mch. 24, Filed demurrer of H. H. Oppenheimer.

Oct. 1, Filed opinion, Thomas, J. Demurrer sustained. Indictment dismissed as to—H. Oppenheimer, A. Samuels, C. Hepner, R. Abrahams.

Indictment.

2882. 7-278.

District Court of the United States of America for the Southern District of New York.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, begun and held in the City of New York, within and for the District aforesaid, on the first Tuesday of December in the year of our Lord one thousand nine hundred and fourteen, and continued by adjournment to and including the 21st day of December in the year of our Lord one thousand nine hundred and fourteen.

SOUTHERN DISTRICT OF NEW YORK, ss:

The Grand Jurors of the United States of America, within and for the District aforesaid, on their oath present, that during the year nineteen hundred and twelve, and up to and including the fifth day of August, nineteen hundred and twelve, Jacques Samuels and Joseph Samuels, late of the City and County of New York, were engaged in business at number 129 West 20th Street, in the City, County and State of New York, as co-partners, doing business under the firm name of Joseph Samuels & Co., as manufacturers and dealers in braids and embroideries, and kindred merchandise; that Jacques Samuels was and is a resident of the City and County of New York; that Joseph Samuels was and is a resident of the City and County of New York; that Abraham Samuels was and is a resident of the City and County of New York; that Herman J. Dietz was and is a resident of the City and County of New York; that Charles Hepner was and is a resident of the City and County of New York; that Herman H. Oppenheimer was and is an attorney at law in the City and County of New York, with offices at
27 Number 170 Broadway, City and County of New York; and was the attorney for said Joseph Samuels & Co., individually and as a co-partnership as aforesaid; that on the fifteenth day of June, nineteen hundred and twelve, in the County of New York, Southern District of New York, and within the jurisdiction of this Court, the said Jacques Samuels and Joseph Samuels, co-partners doing business as aforesaid, under the firm name of Joseph Samuels & Co., then and there anticipated, contemplated and planned that a petition in bankruptcy should thereafter be filed to have the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as a co-partnership, adjudicated bankrupt under the bankruptcy laws of the United States; and that thereafter, in the due course of the bankruptcy proceedings, a trustee for the estate in bankruptcy of the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph

Samuels & Co., individually and as a co-partnership, should be duly appointed.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that on the fifth day of August, nineteen hundred and twelve, a petition in bankruptcy was duly filed in the United States District Court for the Southern District of New York to have the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as co-partners, adjudicated bankrupts; that on the fifth day of August, nineteen hundred and twelve, Alexander S. Webb, was duly appointed receiver of the assets and effects of the said co-partnership, doing business as aforesaid, and of the
 28 individual estates of said Jacques Samuels and Joseph Samuels, and on the sixth day of August, nineteen hundred and twelve, the said Alexander S. Webb, duly qualified as such; that on the twenty-third day of October the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as co-partners, were duly adjudicated bankrupts by the said United States District Court; that on the fourth day of November, nineteen hundred and twelve, Alexander S. Webb was duly appointed trustee of the assets and effects of the estate in bankruptcy of the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., and of their individual estates, and the said Alexander S. Webb, on the thirteenth day of November, nineteen hundred and twelve, duly qualified as such, and thereafter continued to act as such trustee up to and including the 21st day of December, nineteen hundred and fourteen.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that the said Jacques Samuels and Joseph Samuels, on the fifteenth day of June, nineteen hundred and twelve, and continuously on all other days thereafter to and including the 21st day of December, nineteen hundred and fourteen, in the County of New York, Southern District of New York, and within the jurisdiction of this Court and under the circumstances aforesaid, did wilfully, knowingly and unlawfully conspire together, and with the said Abraham Samuels, Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer, and each of them, to commit an offense against the United States, that is to say, the said Jacques Samuels, Joseph
 29 Samuels, Abraham Samuels, Herman J. Dietz, Charles Hepner and Herman H. Oppenheimer, did wilfully, knowingly and unlawfully conspire and corruptly and fraudulently agree among themselves that they would knowingly and fraudulently, while the said Jacques Samuels and Joseph Samuels, individually and as co-partners doing business as aforesaid under the firm name of Joseph Samuels & Co., should be bankrupts as aforesaid, conceal from the said trustee of the said estates in bankruptcy, certain properties and moneys, which would, in the due course of the administration of said estates in bankruptcy belong to the said estates in bankruptcy, to wit, certain moneys on deposit in banking institutions in the City of New York, to the credit of said Jacques Samuels

and Joseph Samuels, and of the said co-partnership Joseph Samuels & Co., to an amount upwards of one thousand dollars (\$1,000.00) and certain other moneys and choses in action which would thereafter become due from customers of the said co-partnership for merchandise sold to said customers by said co-partnership, and property consisting of certain shares of stock of the Borough Apartment Company, a corporation organized and existing under the laws of the State of New York, which said certificates of stock had been issued by the said Borough Apartment Co. in the names of the said Jacques Samuels and said Joseph Samuels, and were the property of said co-partnership of Joseph Samuels & Co., the value of said certificates of stock being upwards of the sum of one thousand dollars (\$1,000.00) and other property, the kind, amount and particular description of which, and the exact amount and value of which, is now to the Grand Jurors unknown; and the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Herman J. Dietz, Charles Hepner and Herman H. Oppenheimer did, beginning with the said fifteenth day of June, nineteen hundred and twelve, conceal the aforesaid money and property belonging to the said co-partnership, and continued to conceal the same until the thirteenth day of November, nineteen hundred and twelve, when said Alexander S. Webb
30 was appointed trustee as aforesaid, and since said thirteenth day of November, nineteen hundred and twelve, did continue to conceal the same from said trustee up to and including the 21st day of December, nineteen hundred and fourteen.

And in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels, Abraham Samuels and Herman H. Oppenheimer did on or about the twenty-eighth day of June, nineteen hundred and twelve, in the County of New York, Southern District of New York, make and cause to be made, and counsel and advise the making of false and fictitious entries in a certain book called "time-book" belonging and appertaining to the business of Joseph Samuels & Co., whereby it was made to appear that certain persons and employees, employed by said co-partnership had received from said co-partnership for their services more money than such persons and employees had actually received.

And further in pursuance of and to effect the object of said conspiracy, the said Abraham Samuels did, on or about the 28th day of June, 1912, in the County of New York, Southern District of New York, write up and cause to be written up a certain book called "time book" belonging to and pertaining to the business of Joseph Samuels & Company, whereby it was made to appear by the recording of false and fictitious entries therein that certain persons and employees employed by the said co-partnership had received from said co-partnership for their services more money than such persons and employees had actually received.

34 And further in pursuance of and to effect the object of said conspiracy, said Jacques Samuels, said Joseph Samuels and said Herman H. Oppenheimer did, on or about June 20, 1912, destroy and cause to be destroyed and counsel and advise the de-

struction of a certain book of accounting belonging and appertaining to the business of said co-partnership of Joseph Samuels & Co., called "purchase ledger," and certain other books of account, the number and more particular description of which are now to the Grand Jurors unknown.

And further in pursuance of and to effect the object of said conspiracy, the said Herman J. Dietz, at the request and upon the advice of said Jacques Samuels and said Herman H. Oppenheimer, did, on or about June 28, 1912, sign and deliver to said Jacques Samuels a certain promissory note, for the sum of forty-five hundred dollars (\$4500.00), which said note was marked "Non negotiable," and was in words and figures as follows:

\$4,500.00/100.

NEW YORK, May 16, 1912.

Four months after date, I promise to pay to Joseph Samuels & Co. Forty Five Hundred 00/100 Dollars at The Columbia Bank, 407 Broadway, N. Y.

Value received non negotiable.

No. —.

Due Sept. 16.

H. J. DIETZ.

for which promissory note no consideration was paid by said Joseph Samuels & Co., and was made and signed by said Herman J. Dietz for the purpose of making it to appear that the assets of the said estates in bankruptcy were greater than they actually were, as the said Jacques Samuels and the said Herman H. Oppenheimer well knew.

32 And further in pursuance of and to effect the object of said conspiracy, the said Charles Hepner did, on July 25, 1912, write his indorsement upon the back of a certain check drawn by the said Jacques Samuels in the name of Joseph Samuels & Co., upon the Pacific Bank in the City of New York, to the order of Charles Hepner, in the amount of \$405.40, which said check and the indorsement upon the back of said check are as follows:

Face of Check.

No. 160.

NEW YORK, July 25, 1912.

The Pacific Bank,
Madison Avenue Branch, 28th St.

Pay to the order of Charles Hepner Four hundred & five 40/100 Dollars.

\$405 40/100.

JOS. SAMUELS & CO.

Back of check: Jos. Samuels & Co. Charles Hepner.

And further in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels did, on July 22, 1912, take from

the funds of said co-partnership of Joseph Samuels & Co., the sum of \$1,100.00, which said sum of money would, in the due course of the administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said co-partnership and did conceal and secrete the said sum of \$1,100.00 from said Alexander S. Webb, the trustee of said estate in bankruptcy, and has since said 22nd day of July, 1912, continued to conceal said sum of money from said trustee, to and including the 21st day of December, 1914.

33 And further in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels did, on July 26, 1912, take from the funds of said co-partnership of Joseph Samuels & Co., the sum of \$2500.00, which said sum of money would, in the due administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said co-partnership, and did conceal and secrete the said sum of \$2500.00 from said Alexander S. Webb, the trustee of said estate in bankruptcy, and has, since said 26th day of July, 1912, continued to conceal said sum of money from said trustee, up to and including the 21st day of December, 1914.

And further in pursuance of and to effect the object of said conspiracy and in order to aid and assist the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Charles Hepner, Herman J. Dietz and Herman H. Oppenheimer in continuing the concealment from said Trustee in Bankruptcy, of the money and property belonging to the said estates in bankruptcy of the said Joseph Samuels & Co., so concealed from said Trustee in Bankruptcy, the said Herman H. Oppenheimer, in a bankruptcy proceeding instituted and pending in the United States District Court for the Southern District of New York, to have the said Jacques Samuels and one Benjamin Lesser, individually and as co-partners, doing business under the firm name of Abrahams & Lesser, adjudged bankrupts under the Bankruptcy Laws of the United States, and of which co-partnership the said Jacques Samuels was a member and principal owner, was examined before the said Macgrane Cox, Esquire, Referee in Bankruptcy, in support of an application made by the said Herman H. Oppenheimer for an allowance as the attorney for the said co-partnership of Abrahams & Lesser and the said Jacques Samuels as a member of said co-partnership; and the said Herman H.

34 Oppenheimer did, then and there, on the 19th day of January, 1914, willfully and falsely testify, in substance and effect, that he had, since the latter part of July, 1912, and up to the said 19th day of January, 1914, received no money or property in said bankruptcy action so pending against Joseph Samuels & Co., individually and as a co-partnership as aforesaid, as compensation for legal services, except that he, the said Herman H. Oppenheimer, had received an agreement to be paid compensation in addition to whatever allowance might be made to him by the Court for such services out of the estates in bankruptcy of said Joseph Samuels & Co., individually and as a co-partnership, as aforesaid, whereas, in truth and in fact, the said Herman H. Oppenheimer did, on or about the 1st day of September, 1912, receive from the said Jacques Samuels a promissory note in and for the sum of \$897.36, with in-

terest, made by the Universal Textile Company, a customer of said Joseph Samuels & Co., dated July 20, 1912, payable two months after date, to the order of Joseph Samuels & Co., and did thereafter, on September 11, 1912, receive payment therefor in the sum of \$897.36, which said promissory note and its proceeds was the property of the said co-partnership of Joseph Samuels & Co. and would, in the due administration of the said estates in bankruptcy, have belonged to the said estates in bankruptcy; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (§37 U. S. C. C. and §29b of the Bankruptcy Act.)

H. SNOWDEN MARSHALL,

U. S. Attorney.

35-39 (Endorsed:) 7-278. 2882—U. S. District Court. The United States of America *vs.* Jacques Samuels, Joseph Samuels, Abraham Samuels, Herman J. Dietz, Charles Hepner and Herman H. Oppenheimer.—Indictment. Conspiracy to conceal assets from Trustee in Bankruptcy.—U. S. C. C. Sec. 37 and Sec. 29-b Bankruptcy Act.—H. Snowden Marshall, U. S. Attorney.—A True Bill. Eugene S. Benjamin, Foreman.—U. S. District Court, S. D. of N. Y. Filed Dec. 21, 1914.

1914, Dec. 22. Oppenheimer pleads not guilty. Bail \$500.

1915, Jan. 4. Def't Dietz pleads not guilty. Bail \$2,500.

Jan. 4. Filed Motion to quash, Plea in Abatement, Plea in Bar and Demurrer as to H. H. Oppenheimer.

Jan. 6. Filed demurrer and motion to quash and Special Plea in Bar as to H. J. Dietz.

Jan. 20. Dietz withdraws plea of not guilty.

Jan. 21. H. H. Oppenheimer withdraws pleas of not guilty.

Jan. 30. Filed Joinder in Demurrer.

1916, Feb'y 2. Filed Opinion—Pope, J. Indictment Ordered quashed and allowing defendants to go without day thereunder.

2882. 7-278.

40 United States District Court, Southern District of New York.

No. ~~7-287~~. 278

THE UNITED STATES OF AMERICA
against

JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM SAMUELS, HERMAN J. DIETZ, CHARLES HEPNER, and HERMAN H. OPPENHEIMER.

Motion to Quash on Behalf of Herman H. Oppenheimer.

And, now comes the defendant, Herman H. Oppenheimer, and moves this Court to set aside the indictment filed in this case for the following reasons:

1. It appears from the records of this Court that the indictment herein is barred by reason of the adjudication in re United States against the same parties who are defendants in this indictment, numbers 2461 and 2462.

2. The indictment is barred by the statute of limitations contained in Section 29-d of the Bankruptcy Law of 1898.

3. The indictment does not set forth facts sufficient to constitute a crime under the Laws of the United States, now in force.

4. That the facts set forth in the indictment are impossible, indefinite and uncertain and do not inform the defendant sufficiently of the nature of the charge against him, as provided for by law.

5. The indictment does not charge an offense cognizable by this Court or covered by the statutes of the United States of America.

41 6. That the Grand Jury, when it voted this indictment had no evidence before it showing the commission of the crime and the overt acts charged in the said indictment, against said defendant, Oppenheimer, and did not have competent legal evidence as to either or both and the same more fully appears by the records of the said Grand Jury and more particularly from the facts that the said indictment alleges that the defendant, Oppenheimer, gave certain false and willful testimony on January 19th, 1914, and there was no legal or competent evidence before the said Grand Jury that he had so testified reference being made to the affidavits of H. H. Oppenheimer and Herbert A. Mossler hereto annexed, and there never was such testimony given by said defendant, Oppenheimer.

7. That the Grand Jury, when it voted this indictment had no evidence before it showing the commission of the crime and the overt acts charged in the said indictment against said defendant, Oppenheimer, and did not have competent legal evidence as to either or both and the same more fully appears by the records of the said Grand Jury and more particularly from the facts that the said indictment charges the defendant, Oppenheimer, with having received payment of a note given to him by the bankrupt during September, 1912. There was no competent legal evidence before the said Grand Jury of the said fact.

8. That the Grand Jury, when it voted this indictment had no evidence before it showing the commission of the crime and the overt acts charged in the said indictment against said defendant, Oppenheimer, and did not have competent legal evidence as to either or both and the same more fully appears by the records of the said Grand Jury and more particularly from the facts that the said indictment alleges that the defendant, Oppenheimer, conspired with various persons and there was no competent legal evidence
42 before the Grand Jury of the creation or existence of the said conspiracy.

9. The said Grand Jury which voted the said indictment was improperly constituted and the members thereof were not proper persons to pass on the said indictment, at least one of them being interested in the subject matter thereof, as a creditor, and the said

Juror was present while the witnesses were being heard, and as defendant believes, during the deliberations and voted upon the said indictment, which fact was known to all of the said Grand Jurors who voted on the said indictment, in contravention to the Statutes of the United States now in force in reference to qualification of Grand Jurors and to the self-evident injury and harm of the defendant, Oppenheimer.

Wherefore, the said Herman H. Oppenheimer prays judgment of the said indictment whether the United States of America ought or can prosecute him in the premises and that he may be discharged thereof without delay, and the indictment quashed.

New York, January 4th, 1915.

KELLOGG & ROSE,
Attorneys for Defendant Oppenheimer.

O. & P. O. Address, 115 Broadway, Manhattan, New York City.

ABRAM J. ROSE, Esq.,
Of Counsel.

BENJAMIN SLADE, Esq.,
Of Counsel.

We hereby certify that the above plea is not interposed for delay but should be sustained on the merits.

Dated, New York, January 4th, 1915.

KELLOGG & ROSE,
Attorneys for Defendant Oppenheimer.

43 United States District Court, Southern District of New York.

No. 7-~~287~~. 278

UNITED STATES OF AMERICA
against

JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM SAMUELS, HERMAN J. DIETZ, CHARLES HEPNER, and HERMAN H. OPPENHEIMER.

Affidavit on Motion to Quash.

UNITED STATES OF AMERICA,
Southern District of New York,
State, City, and County of New York, ss:

Herman H. Oppenheimer, being duly sworn, deposes and says:
That he is one of the defendants herein.

That deponent never gave any evidence in any proceeding as stated in the last paragraph of the indictment herein, as more fully appears by a copy of the said testimony hereto annexed and made part hereof.

Deponent never signed the said testimony, nor were the hearings in the matter, in which it was given closed, nor was the said testi-

mony complete, all of which fully appears by the said testimony, and therefore deponent believes no valid indictment can ever be based on the said testimony.

The only persons present at the said hearing besides deponent were Honorable Macgrane Coxe, the referee, Frank C. McCarrick, the stenographer, Mr. Herman Heidelberg, Mr. Thomas Adams and Mr. Grenville Clark. Your deponent has asked Herman Heidelberg,

44 Thomas Adams and Mr. Grenville Clark whether they appeared before the Grand Jury that found the present indictment in December, 1914, and all of them replied that they had not appeared and had given no testimony, and the only other persons who were present at the said examinations, and who could testify to what was said thereat or identify the minutes thereof were the stenographer and referee, and they have denied that they have appeared before the Grand Jury who found the indictment, as more fully appears by the affidavit, of Herbert A. Mossler hereto annexed.

Wherefore, your deponent believes that no evidence whatever was given of testimony by deponent legally before the said Grand Jury.

Deponent further says that the statement in the last paragraph of the indictment to the effect that the said defendant, Oppenheimer, received payment of a certain note, deponent has asked all the persons who have knowledge of the same as to whether they appeared before the Grand Jury who found this indictment, and they have all stated to deponent that they have not appeared before the said Grand Jury, and deponent believes, therefore, that there was no legal evidence of the payment of the said note to deponent before the Grand Jury.

Deponent further says that he is informed and believes that the only witnesses who appeared before the Grand Jury that found this indictment were alleged co-conspirators and deponent believes that their testimony is insufficient on which to find an indictment for conspiracy, their declarations and acts or confessions being in Law, insufficient to establish the creation and existence of a conspiracy.

45 Deponent further says that one of the members of the said Grand Jury who found this indictment is a creditor of the Borough Apartment Realty Co., a corporation conducted entirely by the bankrupts, and referred to in the present indictment, in paragraph 4 thereof, as being part of the transferred and concealed assets and that the said person by reason of being a creditor of the said corporation alleged to be owned and directed by the bankrupts was an improper person to serve as a juror in this case, and deponent is informed and verily believes that the said person was present throughout the proceedings, took part in the deliberations and vote on the present indictment.

That the name of the said person is at present unknown to your deponent, but deponent can obtain the same through subpoenaing the members of the said Grand Jury and others who have refused to divulge the said juror's name or have forgotten the same.

HERMAN H. OPPENHEIMER.

Sworn to before me this 31st day of December, 1914.

J. CARL BECKER,
Com. of Deeds, New York City.

46 United States District Court, Southern District of New York.

No. 7-278.

UNITED STATES OF AMERICA
against

JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM SAMUELS, HERMAN
J. DIETZ, CHARLES HEPNER, and HERMAN H. OPPENHEIMER.

Affidavit on Motion to Quash.

UNITED STATES OF AMERICA,
Southern District of New York,
State, City, and County of New York, ss:

Herbert A. Mossler, being duly sworn, deposes and says:

That he is a Clerk in the Office of Herman H. Oppenheimer.

That during the month of December, 1914, he asked one Frank C. McCarrick, the stenographer referred to in the annexed affidavit of Herman H. Oppenheimer, whether he had appeared before the Grand Jury of the United States District Court, for the Southern District of New York, and the said Frank C. McCarrick told your deponent that he had not appeared before the said Grand Jury, during the said month.

Deponent then asked said McCarrick to make an affidavit to that effect but said McCarrick refused to do so, stating that he did not wish to be connected with the matter.

Deponent also asked Mr. Macgrane Coxe, the Referee in charge of the proceedings of Abraham & Lesser whether he had testified before the Grand Jury of this Court during the month of December, 1914,

47 and Mr. Coxe said he had not appeared or testified and deponent then asked whether the said referee would make an affidavit to the same and said referee, Macgrane Coxe replied that deponent could make his affidavit to the said effect.

HERBERT A. MOSSLER.

Sworn to before me this 31st day of December, 1914.

J. CARL BECKER,
Com. of Deeds, New York City.

(Endorsed:) Received Jan. 4, 1915. H. Snowden Marshall, U. S. Attorney. U. S. District Court, S. D. of N. Y. Filed Jan. 4, 1915.

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Additional Affidavit on Motion to Quash.

United States District Court, Southern District of New York.

No. 7-278.

UNITED STATES OF AMERICA

against

JACQUES SAMUELS, HERMAN H. OPPENHEIMER et al.

Affidavit.

UNITED STATES OF AMERICA,

*Southern District of New York,**State, City, and County of New York, ss:*

Herbert A. Mossler, being duly sworn, deposes and says:

That he is a Clerk in the office of Herman H. Oppenheimer.

That on the 13th day of January, 1915, he was informed by Honorable Macgrane Coxe, Referee in charge of the case of Joseph Samuels & Co., and the Referee who was present at the taking of the examination of Herman H. Oppenheimer, which is more fully referred to in the indictment in this Court, numbered 7-278, that the said Referee had, at no time issued any duly authenticated copies of the testimony taken at the examination of the said Herman H. Oppenheimer, on January 19, 1914, nor had he issued any certified copies or other copies of it, with the certificate of its correctness.

Your deponent made inquiry of said referee and his clerks and the stenographer whether any legally certified copies of the said record had been issued and was informed that there was never any issued.

The said Referee is the person who has charge of said 49-75 record and the only person who can legally certify the same.

HERBERT A. MOSSLER.

Sworn to before me this 12th day of January, 1915.

J. CARL BECKER,
Com. of Deeds, N. Y. City.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Feb. 4, 1916.

76 United States District Court, Southern District of New York.

No. 7-278.

UNITED STATES OF AMERICA, Plaintiff,

vs.

HERMAN H. OPPENHEIMER et al., Defendants.

Notice of Motion.

SIRS: Please take notice that a motion will be made before the United States District Court for the Southern District of New York, in the United States Court House & Post Office Building, at the term thereof for the hearing of criminal business, on Monday, the 25th day of January, 1915, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard.

1. That the defendant Herman H. Oppenheimer be directed to elect which of the documents filed herein, entitled as follows:

- a. "Demurrer,"
- b. "Plea in Abatement,"
- c. "Motion to quash on behalf of Herman H. Oppenheimer,"
- d. "Plea in bar,"

he stands on in this case, and that the other of said documents be stricken from the records of this Court until the adjudication on the document on which said defendant may elect to stand.

2. That the document entitled "Plea in Abatement" be stricken from the records of this Court on the ground that the defendant has filed a demurrer to the indictment herein and thus waived any defect which might be taken advantage of by a plea in abatement.

3. That the document entitled "Plea in Abatement" filed herein be stricken from the records on the ground that it is not properly verified as required by law.

4. For such other and further relief in the premises as may be just and proper.

Dated: New York, Jan. 21, 1915.

Yours, etc.,

H. SNOWDEN MARSHALL,

United States Attorney, Attorney for the Plaintiff.

Office & Post Office Address: U. S. Court House & Post Office Building, Borough of Manhattan, City of New York.

To Messrs. Kellogg & Rose, Attorneys for Defendant Oppenheimer, 115 Broadway, Borough of Manhattan, City of New York.

78 United States District Court, Southern District of New York

7-~~28~~. 278

UNITED STATES OF AMERICA, Plaintiff,

vs.

HERMAN H. OPPENHEIMER et al., Defendants.

Notice of Motion.

SIR: Please take notice that, upon the annexed affidavit of Samuel Hershenstein, duly verified on January 8, 1915, a motion will be made before the United States District Court, Southern District of New York, in the United States Court House and Post Office Building, at the term thereof for the hearing of criminal business, on Wednesday, the 13th day of January, nineteen hundred and fifteen, at 10:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, to strike from the records of this Court certain documents filed herein, entitled as follows: (1) "Demurrer"; (2) "Plea in Abatement"; (3) "Motion to Quash on Behalf of Herman H. Oppenheimer"; (4) "Plea in Bar," on the ground that at the time said documents were filed, the plea of "not guilty" theretofore entered by the defendant, Herman H. Oppenheimer, was not withdrawn and said plea of "not guilty" still remains of record in this Court.

Dated: New York, January 8th, 1915.

Yours, etc.

H. SNOWDEN MARSHALL,

*United States Attorney for the Southern District
of New York, Attorney for the Plaintiff.*

To Kellogg & Rose, Attorneys for the defendant Oppenheimer,
115 Broadway, New York City.

79 United States District Court, Southern District of New York.

No. 7-~~28~~. 278

UNITED STATES OF AMERICA, Plaintiff,

vs.

HERMAN H. OPPENHEIMER et al., Defendants.

Affidavit.

SOUTHERN DISTRICT OF NEW YORK,

City and County of New York, ss:

Samuel Hershenstein, being duly sworn, deposes and says, that he is an Assistant United States Attorney for the Southern District

of New York; that on December 21st, 1914, the United States Grand Jury for the Southern District of New York duly filed in this Court an indictment charging the above named defendant, Herman H. Oppenheimer, and others, with a violation of Section 37 of the United States Criminal Code; that on December 22nd, 1914, the said defendant, Herman H. Oppenheimer appeared in Court and pleaded to said indictment "not guilty" with leave to withdraw said plea by January 4, 1915, and demur or make any other plea or motion he may be advised on said date.

That on January 4th, 1915, the said Herman H. Oppenheimer did not withdraw said plea of "not guilty" but placed on file in said Court four documents entitled as follows: (1) "Demurrer"; (2) "Plea in Abatement"; (3) "Motion to Quash on Behalf of Herman H. Oppenheimer"; (4) "Plea in Bar"; that the plea of "not guilty" still remains upon the records of this Court, as well as the
80 other documents above referred to.

SAMUEL HERSHENSTEIN.

Sworn to before me this 8th day of January, 1915.

[SEAL.]

FREDERICK L. CAMPBELL,
Notary Public, Kings County, No. 127.

Certificate filed in New York County, No. 61, New York County.
Register's No. 6164, New York County.
Register's No. 6173, Kings County.
My Commission expires March 30, 1915.

(Endorsed:) Copy received Jan .8. 1915. Kellogg & Rose. Filed Jan. 21, 1915.

81

Docket Entries.

Criminal Docket. 7-278.

UNITED STATES

VS.

JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM SAMUELS, HERMAN J. DIETZ, CHARLES HEPNER, and HERMAN H. OPPENHEIMER.

H. Snowden Marshall, U. S. Attorney.
Kellogg & Rose, 115 B'way, for Def't Oppenheimer.
Joseph I. Green, 141 B'way.

Conspiracy to conceal assets from Trustee in Bankruptcy.
Sec. 37, U. S. C. C. and Sec. 29-b Bankruptcy Act.
1914.

Dec. 21. Filed Indictment.

Dec. 22. Def't Herman H. Oppenheimer pleads not guilty. Bail \$500.

Dec. 22. Filed Recognizance of Oppenheimer.

1915.

- Jan. 4. Def't Dietz pleads not guilty. Bail \$2,500.
- Jan. 4. Filed Motion to quash, Plea in Abatement, Plea in Bar, and Demurrer as to Herman H. Oppenheimer.
- Jan. 6. Filed Demurrer and Motion to Quash, and special plea in Bar as to H. J. Dietz.
- Jan. 5. Filed Recognizance of Dietz.
- Jan. 20. Def't H. J. Dietz withdraws plea of not guilty.
- Jan. 21. Def't H. H. Oppenheimer withdraws plea of not guilty.
- Jan. 21. Filed Notice of Motion.
- Jan. 30. Demurrers and motion to quash argued—Judge Pope.
- Jan. 30. Pleas in Bar and Pleas in Abatement withdrawn from the record without prejudice to re-filing after decision on demurrer.
- Jan. 30. Filed Joinder in Demurrer.

1916.

- Feb. 2. Filed Opinion, Pope, J. Indictment Ordered Quashed and allowing Defendants to go without day thereunder.
- Feb. 14. Filed Amended Opinion, Pope, J.
- Feb. 26. Filed Order granting Motion to quash made by defendant Herman H. Oppenheimer (A. N. Hand, J.).
- Feb. 26. Filed Assignment of Errors, Petition for Writ of Error.
- Feb. 28. Filed Citation and Writ of Error, U. S. Supreme Court.
- Mar. 9. Stip. as to record.

82

Opinion.

District Court of the United States, Southern District of New York.

Nos. 2461-2462.

UNITED STATES OF AMERICA

vs.

JACQUES SAMUELS et als.

R. B. Woods, Esq., of New York City, Assistant District Attorney for the United States.

Abram J. Rose, Esq., Emanuel Jacobus, Esq., and Benjamin Slade, Esq., all of New York City for defendants.

THOMAS, *District Judge*:

The defendant and nine others were jointly indicted by the Grand Jury on February 24th, 1914, charged with a conspiracy to conceal assets from a trustee in Bankruptcy in violation of Sec. 29b of the Bankruptcy Act and with violating Sec. 37 of the United States Criminal Code.

Four of the defendants, Herman H. Oppenheimer, Abraham Samuels, Charles Hepner and Ray Abrahams, are represented by coun-

sel and pleadings bearing various titles have been filed in their behalf. Each of these four last mentioned defendants in his pleadings asks that the indictment, so far as it relates to him, be quashed for the reason that the acts alleged in the indictment are barred by the statute of limitations contained in Section 29*d* of the Bankruptcy Act. Said Section reads as follows:

"A person shall not be prosecuted for any offense arising under this act unless the indictment is found or the information is filed in court within one year after the commission of the offense."

83 In my opinion the above quoted section is determinative of the issues presented by the indictment against the aforementioned defendants who have, in their pleadings attacking the indictment, invoked the provision of said section, hence there is no occasion to determine other questions raised by pleadings some of which are of vital importance and decisive.

As already noted the indictment was returned February 24th, 1914. The last overt act alleged in the indictment was on November 25th, 1912.

There are no other facts alleged in the indictment which would warrant this Court in finding a continuous act of conspiracy from November 25th, 1912, to the date of the indictment, February 24th, 1914.

While it may be inferred from the language of the indictment that the concealment continued, no facts are alleged to show the continuance of the conspiracy, if one existed.

In *United States vs. Phillips*, 196 Fed. 574, Judge Hough of this District after carefully analyzing the cases of *U. S. v. Kissel*, 218 U. S., 601 and *U. S. v. Irvins*, 98 U. S., 450, arrived at this conclusion; that while the concealment may continue the crime of concealment was completed long before.

In the case of *In re Adams*, 171 Fed., 599, it is held that concealment must be from "a trustee." In the case at bar the indictment alleges that the trustee qualified on November 4th, 1912. The last overt act alleged in the indictment was twenty-one days later, to wit, on November 25th, 1912.

It is therefore apparent from the language of the indictment that more than one year elapsed after the appointment of
84 the trustee and after the date of the last overt act alleged therein before this indictment was found or filed in Court against these defendants.

If the Statute of Limitation provided for in the Bankruptcy Act, Section 29*d* is controlling, then these indictments should be dismissed as against the four defendants invoking the protection of that statute.

I find nothing in the language of these indictments that warrants a conclusion other than that the offenses therein described were offenses against the Bankruptcy Act and as such should be dealt with according to the plain provisions of that Act, one of which, Section 29*d* is a statute of limitation which effectually bars a prosecution of these defendants invoking its protection. The learned District Attorney contended that the limitation contained in Section

29b does not apply and claimed that the limitation imposed in Sec. 1044 of the Revised Statutes should govern. I cannot subscribe to this contention. In the absence of Section 29 of the Bankruptcy Act this Court would have no jurisdiction over the alleged crime set forth in the indictment. If Congress intended that Section 29d should apply only to the offenses specifically enumerated in the entire section, appropriate language, in my opinion, would have been adopted. For example, if subdivision 29d read "a person shall not be prosecuted for any of the foregoing offenses," etc., then the Government's claim would have some force but the subdivision in question reads in part "for any offense arising under this act." The alleged offense recited in the indictments necessarily arose out of the Bankruptcy Act and not under some other law of the United

States, hence the limitation found in Section 29d applies.

85-88 I therefore find that no lawful indictments were found against Herman H. Oppenheimer, Abraham Samuels, Charles Hepner and Ray Abrahams, or either of them within one year after the offenses alleged in the indictments, and that their prosecution is barred by Section 29b of the Bankruptcy Act. These indictments are therefore dismissed as to each and all of them.

Let an order to that effect be entered.

(Endorsed:) U. S. District Court, S. D. of N. Y., Filed Oct. 1, 1914.

89

Order Quashing Indictment.

United States District Court, Southern District of New York.

No. 7-278.

UNITED STATES OF AMERICA, Plaintiff,
against

JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM SAMUELS, HERMAN J. Dietz, Charles Hepner, and Herman H. Oppenheimer, Defendants.

A motion to quash the indictment herein having been filed by the defendant, Herman H. Oppenheimer, and having duly come on to be heard before the Honorable William H. Pope, District Judge, on the 29th day of January, 1915;

Now, after reading the decision and opinion of Honorable William H. Pope, United States District Judge, dated January 29th, 1916, and filed in the office of the Clerk of the District Court of the United States for the Southern District of New York, on February 2d, 1916, and the amended opinion of said Judge, it is

Ordered and adjudged, that the motion to quash made by the defendant, Herman H. Oppenheimer, be granted and the indict-

ment is hereby quashed and the defendants allowed to go without day thereunder.

Dated New York, February 26th, 1916.

AUGUSTUS N. HAND,
U. S. D. J.

(Endorsed:) U. S. District Court, S. D. of N. Y., Filed Feb. 26, 1916.

90 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA
vs.
HERMAN H. OPPENHEIMER et al.

Assignment of Errors.

The United States of America, in connection with its petition for a writ of error, makes the following assignment of Errors which it avers occurred in the decision of the Court herein sustaining defendant's motion to quash the indictment herein:

I. The Court erred in holding that the action of the Court in quashing the former indictments Nos. 2461 and 2462 were a bar to a re-indictment and prosecution upon a similar charge although the defendant had not been put in jeopardy under said former indictments.

II. The Court erred in describing its action as the granting of a motion to quash the indictment.

III. The Court erred in not describing its action as the sustaining of a special plea in bar.

IV. The Court erred in holding as a matter of law that the last overt act in the indictment herein, could not from its nature and did not legally constitute an overt act under the conspiracy alleged in the indictment.

V. The Court erred in not holding as a matter of law that the last overt act in the indictment herein did constitute an overt act under the conspiracy alleged in the indictment.

VI. The Court erred in holding as a matter of law that the indictment herein is legally identical with the indictments returned Nos. 2461 and 2462, which were dismissed by Judge Edwin F. Thomas, copies of which indictments and opinion are annexed hereto.

VII. The Court erred in sustaining the motion to quash the indictment.

VIII. The Court erred in not denying the motion to quash the indictment herein.

Wherefore the United States of America prays that the judgment of the said District Court of the United States for the Southern District of New York be, under the Act of Congress approved March

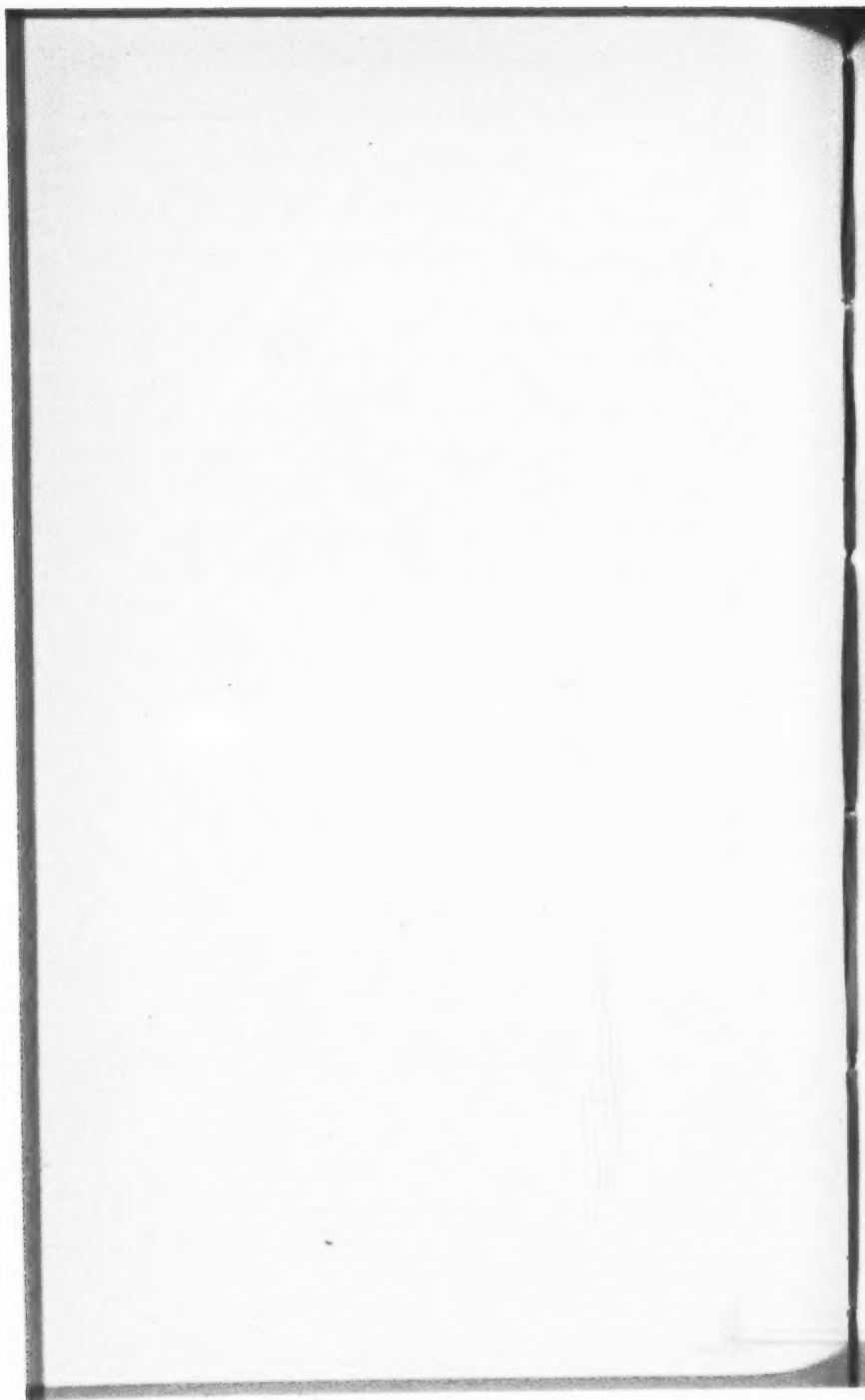
2nd, 1907, reviewed by the Supreme Court of the United States and said judgment be reversed.

H. SNOWDEN MARSHALL,
*United States Attorney for the
Southern District of New York.*

(Endorsed:) U. S. District Court, S. D. of N. Y., Filed Feb. 26, 1916.

93 [Endorsed:] 7-278. C-7-278. Form No. 336. U. S. District Court, Southern District of New York. United States of America versus Herman H. Oppenheimer et al. Citation. H. Snowden Marshall, United States Attorney, Attorney for U. S. Service of a copy of the within is hereby admitted. New York, Feb. 28, 1916. Kellogg & Rose, Attorneys for Def'ts. To Messrs. Kellogg & Rose, Attorney- for Def'ts, 116 Broadway, New York, N. Y. U. S. District Court, S. D. of N. Y. Filed Feb. 28, 1916.

Endorsed on cover: File No. 25,182. S. New York D. C. U. S. Term No. 899. The United States, plaintiff in error, vs. Herman H. Oppenheimer et al. Filed March 15th, 1916. File No. 25,182.



**ADDITIONAL
EXTRACT FROM TRANSCRIPT OF RECORD.**

OPINION OF POPE, J.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 899.412

THE UNITED STATES, PLAINTIFF IN ERROR,

v.s.

HERMAN H. OPPENHEIMER ET AL.

**IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.**

FILED MARCH 15, 1916.

(25,182)



IN THE
District Court of the United States

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACQUES SAMUELS, JOSEPH
SAMUELS, ABRAHAM SAMUELS,
HERMAN J. DIETZ, CHARLES
HEPNER and HERMAN H. OP-
PENHEIMER,

Defendants.

No. 7-278.

Opinion.

The demurrer and the motion to quash filed by the several defendants proceed upon a number of grounds. All of these have been carefully examined.

The attack upon the regularity of the proceedings before the Grand Jury is found not to be well taken. Even if lack of evidence before a Grand Jury to justify the finding of an indictment con-

stitutes grounds for quashing it, the showing in support of the motion to quash is inadequate to show a lack of such evidence. None of the other grounds connected with the hearing before the Grand Jury are, in the light of well settled principles, sufficient to sustain the motion to quash.

Other features of the attack upon the indictment go to portions thereof, rather than the entire instrument, and for that reason cannot be considered.

The only ground which impresses the Court as serious as against the validity of the present indictment arises out of the following state of facts:

An indictment was found against these same defendants on February 24, 1914, which, in legal effect, is identical with the indictment here under consideration. This latter statement is made advisedly notwithstanding the fact that the present indictment, found December 21, 1914, contains an alleged overt act in addition to those set forth in the indictment of February 24th. In other respects the indictments are practically identical. An examination of the additional overt act alleged in the last indictment leads to the view that, notwithstanding certain conclusions of law therein set forth, the matters therein stated cannot, from their nature, constitute an overt act under the conspiracy alleged in each of the indictments. It follows, therefore, as stated above, that the two indictments are legally identical.

With this as a premise, the disposition made of the first indictment is material. The sufficiency of that was before Judge Thomas upon a motion to quash, and was decided by him on October 1, 1914 (which, of course, was in advance of any submission to or swearing of a jury). His decision

quashed the indictment and discharged the defendants thereunder. This decision proceeded upon the ground that the prosecution was barred by the Statute of Limitations. No appeal was taken by the Government from this decision, and thus from October 1, 1914, when the decision was rendered, until December 21, 1914, when this indictment was found, there was nothing pending against these defendants. Should the prosecution under this last indictment be allowed to proceed when there is outstanding a judgment in favor of the defendants to the effect that the Statute of Limitations has run against their alleged offense? The Government urges that this may be done, and further sets forth to the Court the fact that since the decision of Judge Thomas a decision of the Circuit Court of Appeals for this Circuit, as well as a decision by the Supreme Court of the United States, has shown that the Statute of Limitations did not run until three years after the offense instead of one year as held by him, and that his decision was thus erroneous. This latter, however, does not impress me as being of relevance provided the defendants have heretofore been heard upon this issue, have been discharged thereunder, and that judgment being unappealed from remains in force and effect. The decision of Judge Thomas in my judgment became the law of the case, and until reversed, protected the defendants from further prosecution arising upon the same state of facts. While, of course, were the case open to decision upon the question of limitation, the decision of the appellate courts would control, yet the law of the case having been settled previous to these decisions, the defendants should not be subjected to another prosecution while the judgment quashing the indictment and discharging

them still remains in force and effect. To hold otherwise is to subject the citizen to a series of prosecutions when the law contemplates that once having a decision in his favor he should, until such decision is reversed, be allowed to go unmolested by another proceeding on the same charge.

An order will accordingly be entered quashing the indictment of December 21, 1914, and allowing the defendants to go without day thereunder.

This January 29, 1916.

WM. H. POPE,
U. S. District Judge.